The Solicitors' Journal

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CURRENT TOPICS

Legal Aid

THE progress of the great legal aid scheme to the Statute Book continues, and an account appears in this issue of the Bill's Second Reading in the House of Lords. Side by side with the shaping of the legislation goes the creation of the machinery to give effect to it, and the progress that has been made in this direction is demonstrated by the fact that The Law Society is now in a position to begin recruiting solicitors for the senior posts on the Society's legal aid and advice staff. For the moment, as will be seen by reference to the advertisement pages, recruitment is to be confined to the appointment of area secretaries, supervising solicitors and deputy area secretaries, and an additional assistant secretary; but it seems probable that in the autumn the second stage—that of filling the other posts open to admitted solicitors—will begin. Recruitment of legally unqualified staff will in the main be deferred, we understand, until next year.

Town and Country Planning Act: Claims Statistics

A STATEMENT issued by the Central Land Board announces that the final total of claims on the £300,000,000 received by the Board during the twelve-month period which ended on 30th June was about 935,000. The total sum claimed for, states the Board, cannot be estimated because many have no amount on them. There has not been time for more than a cursory examination of some of the claims. It is clear already, however, that many thousands of claims will be "non-starters," either on the ground that there will be no development value, or that the development value will be so small as not to qualify under the Act. The number of claims is somewhat above the Board's own guess, which had to be made before the Town and Country Planning Act came into force, for the ordering of forms and explanatory pamphlets. In the last month there were 780,000 claims, compared with 155,000 in the first eleven months. But on the last evening, when the Board kept their offices open until midnight, comparatively few were handed in. Greater London claims totalled 134,000, which compares with 136,000 for Scotland and 45,000 for Wales. The Eastern area (Cambridge) produced 94,000 claims, the South-Eastern (Tunbridge Wells), 86,000, the North-Western (Manchester), 84,000, the Southern (Reading), 76,000, the Midland (Birmingham), 70,000, the North Midland (Nottingham), 65,000, the South-Western (Bristol), 64,000, the North-Eastern (Leeds), 48,000, and the Northern (Newcastle), 33,000.

Central Land Board: Extension of Time for Mineral Claims

THE promise by the Central Land Board that the time limit for making claims on the £300m. fund in respect of certain mineral undertakings set out at p. 242, *ante*, would be extended, has now been implemented by the Claims for Depreciation of Land Values (Mineral Undertakings) Regulations (S.I. 1949 No. 1176). The regulations, which came into operation on 30th June, extend the time limit for claims to 31st December next in the case of mineral interests in land the development value of which is attributable to the prospect of winning and working of minerals or of operations for the erection or extension of buildings, plant or machinery for use in connection with the winning and working, or the processing, of minerals.

A Council of the Press

WHILE it may be a source of proper pride that we have a decent Press, such a view does not justify the Pharisaism which preaches that we are not as others are, nor does it justify the complacency which sees our own institutions as faultless. Daily readers know what the faults of the newspapers are, and many will agree with the unanimous recommendation of the Royal Commission on the Press, whose report was published on 29th June, that a General Council of the Press be appointed. There are, as the Commission point out, organisations which represent sectional interests within the Press, but none represents the Press as a whole. Functions of the Council, like those of The Law Society or any other professional body, would include recruitment, training, and formulating and making effective high standards of professional conduct. Solicitors, who have for many years been "masters in their own house," will tend to sympathise with the view put forward by Sir GEORGE WATERS and Mr. R. C. K. ENSOR that members of the Council other than the chairman should not be appointed from outside. Even the fact that outside members would, adopting the Commission's proposals, be nominated by the Lord Chief Justice and the Lord President of the Court of Session would not mitigate the evils of such a disguised, if remote, control of what should be a free institution. The most substantial criticism, however, of the general proposal to establish a Council, that of *The Times* of 30th June, that a Council with so varied an agenda "would be tempted to talk without effect" and "might at best merely paper the cracks" is unimpressive, having regard to past and present experience

of the achievements of such bodies as the Council of The Law Society with an equally or more varied agenda, and numbering among its members widely differing types of practitioner.

Central and Local Government Publicity

Two matters of some interest to lawyers which the Royal Commission on the Press, in their recent report, mentioned as matters for consideration by a General Council of the Press were the practice of local authorities and other bodies in excluding or admitting the Press, and the proper relationship between the Press and Government information officers. The Institute of Journalists, the Newspaper Society and the Guild of British Newspaper Editors, among other witnesses, drew attention to the difficulties of provincial newspapers in reporting adequately and accurately the business of local authorities. Complaints were made that the greater part of the work of some local authorities was done in committees from which the Press was excluded, that documents were either not provided so that reporters were unable to follow actual proceedings, or were provided subject to an embargo on publication, so that there could be no previous public discussion of the relevant issues. The Commission made no detailed examination of these charges, as they are the subject of inquiry by the Consultative Committee on Publicity for Local Government. On the matter of Government information services the Commission found that no harmful influence had been exerted up to the present, but " if newspapers get out of the habit of finding their own news, and into the habit of taking all or most of it unquestioningly from a Government department, they are obviously in some danger of falling into totalitarian paths."

A Judge's Criticism

Some severe comments are reported to have been made by Sellers, J., at Nottingham Assizes on 1st July concerning correspondence or depositions which had been incorrectly drawn up or paged. Remarking that not one day had passed at the current Assizes when he had not had to draw attention to this matter, the learned judge complained that solicitors were apparently not doing their work properly and were " quite casual " about it. He added that the fault was not peculiar to that circuit and appeared to be more prevalent in London. While those whom the cap fits will no doubt recognise themselves, we find it difficult to believe that any large number of solicitors are in fact " casual " in such a matter. Shortage of experienced staff may well be the truer explanation in many cases.

The Professional Man and Nationalisation

Sir Herbert Williams had some interesting things to say in his recent talk on " The Professional Man and Nationalisation " to the Institute of Arbitrators (" The Journal of the Institute of Arbitrators," June, 1949). Although he spoke as an electrical engineer, his words were not entirely inapplicable to solicitors and other professional persons employed by the new nationalised industries. Before the electricity supply was nationalised, he said, there were about 600 authorised undertakers, about two-thirds of whom were municipalities and one-third private companies. That gave an engineer a good opportunity of changing his job. There was only one employer to-day and nobody in charge of a district could any longer freely discuss the technicalities of his profession. No civil servant was ever dismissed, and in the Post Office there was not one well-paid job, so that if an idea were put forward to a superior officer, there was a possibility of his not understanding it. The danger in the new nationalised industries was that with the elimination of the fear of failure and free criticism, stagnation would result. Furthermore, without good rewards, the ultimate result would be unattainable. There are signs that the officials of the nationalised undertakings are alive to the dangers indicated by Sir Herbert Williams. Responsibility rests not only on them, but on professional organisations, to see that those dangers are reduced to a minimum.

Recent Decisions

In *Braddock* v. *Tillotson's Newspapers, Ltd.*, on 22nd June (*The Times*, 23rd June), the Court of Appeal (Tucker, Cohen and Singleton, L.JJ.) held that in a libel action where the only issue for the jury was whether the words used were true and accurate, an application—under Ord. 58, r. 4, to the Court of Appeal " to receive further evidence upon questions of fact . . . by oral examination in court," that evidence being the recall of the reporter of the article complained about, in order to answer questions about alleged previous convictions involving dishonesty over a period of ten years—must be refused, as there was no reasonable probability that, even if such evidence had been available at the trial and had been true, the jury would have arrived at a different conclusion.

In *R.B. Policies at Lloyd's* v. *Butler*, on 24th June (*The Times*, 25th June), Streatfeild, J., held that where a motor car had been stolen in 1940 and the defendant had subsequently innocently purchased it after a number of intermediate purchasers had had it, a cause of action had accrued to the plaintiff in 1940 and therefore the defendant could rightly claim the protection of s. 3 (1) of the Limitation Act, 1939, notwithstanding that the person who had committed the tort could not be identified.

In *Collins* v. *Howard*, on 30th June (*The Times*, 1st July), the Court of Appeal (Tucker, Cohen and Singleton, L.JJ.) held, reversing the decision of Humphreys, J., that according to the rules laid down in *Hadley* v. *Baxendale* (1854), 9 Ex. 341, a plaintiff who pursuant to a contract with the defendant had sold certain shares in order to raise money to buy shares in a new company which was to be formed and had repurchased his old shares at a loss when the defendant repudiated the contract, could not recover from the defendant damages for the loss he had suffered as a result of the sale of the old shares. The court held that the loss clearly did not fall within the category of damages which might be fairly and reasonably considered as arising naturally from the breach (Humphreys, J., had held otherwise) nor were they in the contemplation of the parties.

In *Bartram* v. *Bartram*, on 30th June (*The Times*, 1st July), the Court of Appeal (Bucknill, Asquith and Denning, L.JJ.) held that the fact that a wife who had deserted her husband in 1943 subsequently went to live as a lodger in the same house as her husband, but treated him as another lodger and had as little as possible to do with him, did not break the period of desertion so as to disentitle the husband from obtaining a decree of divorce, because the facts did not establish an intention on the part of the wife to set up a common matrimonial home.

In *Dudley and District Benefit Building Society* v. *Emerson and Another*, on 29th June (*The Times*, 30th June), the Court of Appeal (the Master of the Rolls and Somervell and Jenkins, L.JJ.) held that a person who was in occupation of a dwelling-house by virtue of a contract of tenancy between himself and the mortgagor could not as against the mortgagee claim the protection of the Rent Restriction Acts where under the mortgage the mortgagor's right to let by virtue of s. 99 of the Law of Property Act, 1925, was excluded, because although as between himself and the mortgagor such a demise gave the tenant a good title, such title was liable to be defeated by the assertion by the mortgagee of his paramount title, and the mortgagee could not fairly be described as a landlord against whom the Rent Acts were designed to protect a tenant.

In *Elcock and Others* v. *Thomson*, on 1st July (*The Times*, 2nd July), Morris, J., held that where property was insured against loss or damage by fire, and the policy provided that £100,000 should be accepted as the true value of the property and that that should be assumed to be the value in the event of loss, on partial loss by fire the insured were entitled to a percentage of £100,000, based on the depreciation in the actual value of the mansion before and after the fire. Morris, J., held that the agreed value could not be set aside or discarded.

THE LEGAL AID BILL

THE Legal Aid Bill duly received a Second Reading in the House of Lords on 27th June. The debate was initiated by the Lord Chancellor, whose clear summary of the Bill was embellished by an interesting account of the history of legal aid and a further tribute to The Law Society, both for the work which it had done in the past and which it was now undertaking. He gave especial praise to the Services Divorce Department, saying that "no better piece of public work has ever been done by any organisation in this country than the work which The Law Society did with regard to clearing those divorce lists." He also mentioned the voluntary work undertaken by both branches of the legal profession and by charitable organisations and expressed the hope that their work would not cease as a result of the Bill. There will undoubtedly be room for voluntary activities supplementing the State scheme, but if his remarks were intended to suggest that the present voluntary Poor Man's Lawyer Centres should continue as independent centres it is difficult to see how in fact these could advantageously be fitted in.

All the subsequent speakers associated themselves with the Lord Chancellor's tributes and joined with him in deploring that Lord Rushcliffe, "the father of the Bill," was prevented by ill health from being present. There is no doubt that the whole profession will lament that he is unable to participate in the final stages of one of the most beneficial of his many acts of public service. Happily, Lord Schuster, who had been a member of the Rushcliffe Committee, was able to tell the House that Lord Rushcliffe, having read the Bill, saw nothing to which he could object.

Viscount Simon, who, when Lord Chancellor, had appointed the Rushcliffe Committee, welcomed the Bill, as did the Marquess of Reading. The former reserved any criticisms for the Committee Stage, but Lord Reading indicated doubts on three points about which more will doubtless be heard later. They were: (1) the exclusion of certain causes of action, particularly defamation; (2) the exclusion of proceedings before administrative tribunals; and (3) "The apparent complexity of the almost algebraic formula by which the calculation is made as to whether a person is or is not qualified to receive legal aid, or to what extent he may be called upon to contribute towards the expenses." The first two of these are of course familiar and were fully canvassed in the Commons. The third, said Lord Reading, "is possibly peculiar to myself . . . and is merely because I am the most inept of mathematicians." Despite this modest disclaimer there seems little doubt that the assessment of means by the National Assistance Board will be a matter of some complexity, not, perhaps, so much because of the "algebraic formula" as because of the difficulty of obtaining the figures required to apply it. But it is difficult to see how this can be avoided; if the assessment is to be made by a body such as the Assistance Board then obviously fairly rigid rules are essential and too much cannot be left to unfettered discretion which would necessarily result in divergences of practice as between various localities.

The last point links up with a suggestion made by Lord Calverley later in the debate. Speaking as a magistrate he felt that aid certificates in civil matters before magistrates' courts should be granted by the magistrates as in criminal matters, and not by the Certifying Committees. He argued that in such cases aid would have to be granted immediately if it was to be of any use and that reference to the Certifying Committee would necessarily result in delay. But, as the Lord Chancellor pointed out in his reply, if this solution were adopted it would inevitably lead to greater differences of opinion and principle than if the matter were left to the Certifying Committee. Moreover, it is not clear whether Lord Calverley had fully considered the implications of his proposal. The basis of the criminal scheme is that aid, if given, is free, with no question of any contribution from the applicant, and it has been argued that in this respect the civil scheme is preferable and should be applied to criminal cases also. If Lord Calverley's suggestions were adopted it would, on the contrary, lead to an important branch of civil proceedings, a branch of growing importance in view of the impending extension of summary jurisdiction in matrimonial proceedings, being brought within the non-contributory scheme. This seems inevitably to follow, since the magistrates obviously could not attempt to apply the "algebraic formula," while reference to the National Assistance Board would prevent the desired saving of time.

The Bishop of Norwich, in welcoming the Bill on behalf of the Lords Spiritual, feared that the Bill might result in by-passing the probation service with its valuable functions in reconciling parties to matrimonial disputes. The Lord Chancellor emphasised that it was proposed to amend the rules relating to probation officers so that their services would be available to legal advisers and local committees under the Legal Aid Bill, not only when a summons was issued but also at any previous stage. This will certainly be a valuable reform since there is little doubt that if their intervention is to be successful it must come at as early a stage as possible. If full use is made of it by Certifying Committees the Bishop's fears should be groundless, but if they are not called in until a summons is issued, it may be argued that the fact that the parties will be legally represented may hinder rather than help a reconciliation. Lord Schuster said that his experience was that the solicitors' first, and perhaps last, efforts were directed towards a reconciliation, but even if this is universally true it is possible that the mere interposition of solicitors between the lay clients and the solicitors' fear of collusion may militate against the prospects of reconciliation.

Lord Mancroft associated himself with Lord Reading in regretting the exclusion of defamation and proceedings before special tribunals and also regretted that the provisions for legal advice were restricted or that they would not cover such cases as the making of wills and the drawing of conveyances and partnership deeds. In his reply the Lord Chancellor emphasised that the exclusion of defamation, etc., was not necessarily permanent; it was designed to prevent overloading and the incurring of too great expense, but if their fears proved unjustified the scheme could be extended by regulation. This caution is probably wise. No one can say definitely what the effect of the Bill will be on the volume of litigation, but the danger period is obviously the first few years, and during these the demand for aid may be similar to the demand for sweets immediately following the removal of rationing. There is undoubtedly a pent-up stream of cases (mainly divorces) waiting to be released when the scheme comes into operation, since for the last two or three years Poor Man's Lawyer Centres up and down the country have had to advise applicants earning more than £4 per week either to raise the necessary finance, or to appear in person, or to await the passing of the Bill. The majority have certainly raised the cash somehow, a few have handled their cases in person,* but a substantial number have waited. If this number is not too great then it is thought that once the initial period is surmounted the effect of the scheme on legal practice should not be as great as some have feared (or hoped). If this is right there is good reason to hope for an extension in the not too distant future. But the Lord Chancellor held out no encouragement that the drawing of documents would ever be brought within the scheme. This seems unfortunate; no doubt it is true that in general the costs of disposing of property should be borne by the parties out of the property but there is surely a case for allowing advisers to draw up simple wills and contracts.

L. C. B. G.

* The writer knows of one divorce case where the centre advised the applicant to petition in person and gave him help and advice during the various stages. All went well until the hearing, when the applicant got stage-fright and the judge was unable to make head or tail of his story. Happily a distinguished member of the Bar rose *amicus curiæ* and after a hasty consultation handled the case for him and obtained a decree. The centre felt that the result fully justified their advice (particularly as a decree was obtained in half the time that a poor person's case would then have taken), but the barrister did not seem to see it quite in that light!

LOCAL GOVERNMENT NEWS—I

The Boundary Commission

This article, the first of a series of jottings on local government topics, is written on the morrow of the Minister's announcement to Parliament that the Boundary Commission is to be wound up.

In making this statement to the House, Mr. Aneurin Bevan used three arguments to defend the ending of the Commission :–

(1) The Local Government Boundary Act of 1945 gave the Commission no power to alter the structure of local government or to vary its functions.

(2) The position had been changed since 1945 as a result of Government legislation which has shifted functions from one group of local authorities to another.

(3) Private Bill procedure is no more expensive or tedious than the machinery of the Boundary Commission.

As regards the Minister's second point it may not come amiss to set out in tabular form the wholesale changes in the powers of local authorities made in the lifetime of this Parliament. There is set out below a profit and loss account for each authority as given in *Hansard*, H.C., 22nd February, 1949, cols. 272–3. It should be remembered that the table deals with *powers* only, e.g., county councils have had power to run ambulances since 1936, though only a few did so. In the lifetime of this Parliament this power has been turned into a duty. The table does not indicate changes of this sort, which may have substantially increased an authority's expenditure.

AUTHORITY	GAIN	LOSS
County councils	Town and country planning Fire services Miscellaneous powers for prevention and treatment of illness Provision of entertainments Power to supply information and publicity with regard to local government services Provision for financial loss of members, and enlarged power to provide for their expenses In some areas, police In some areas, child life protection, maternity and child welfare, and midwifery services	Provision of hospitals and maternity homes Relief of the poor except for provision of residential accommodation
County boroughs	Fire services Provision of entertainments Power to supply information and publicity with regard to local government services Provision of civic restaurants—war-time powers replaced by permanent legislation Powers in connection with rent control of furnished dwellings where tribunals have been established—keeping registers of rents fixed, referring cases to tribunals, instituting proceedings for offences Provision for financial loss of members	Provision of hospitals and maternity homes Relief of the poor, except for provision of residential accommodation In some areas, supply of electricity In some areas, supply of gas
Municipal boroughs	With the exception of fire services, the same powers as added to county boroughs	Town and country planning Miscellaneous powers for prevention and treatment of illness In some areas, child life protection, provision of maternity homes, maternity and child welfare and midwifery services Provision of ambulance services In some areas, police In some areas, supply of electricity and supply of gas
Metropolitan boroughs	With the exception of fire services and civic restaurants, the same powers as added to county boroughs	Miscellaneous powers for prevention and treatment of illness
District councils	The same powers as added to county boroughs, with the exception of fire services; and with the addition of power to pay an allowance to the chairman, and in rural districts of provision for travelling and subsistence expenses of members	Town and country planning Miscellaneous powers for prevention and treatment of illness Provision of ambulance services In some areas (mainly urban districts), child life protection, provision of maternity homes, maternity and child welfare, and midwifery services In some areas (mainly urban districts), supply of electricity, and supply of gas

The Minister's decision was no doubt made after a consideration of the most recent Commission report. In the report for 1948 the Commission had indicated that they proposed to select cases where they could make an order which would still be an appropriate order if the law was eventually amended on the lines recommended by the Commission. The Minister had, however, told them that no comprehensive legislation on local government reconstruction was to be introduced in the near future. Although Mr. Bevan's recent statement indicates that the Government do now propose to review the functions of local government, there is no hint as to when this is to be done.

To return to the Minister's first point, the Act of 1945 did in fact give the Commission very wide powers. It could divide or unite counties; reduce a county borough to borough status and raise a borough to county borough status. It is true that the Commission had asked for wider powers than those it possessed. But would it not have been possible to direct the Commission to exercise its present powers in appropriate cases, rather than terminate its existence because the additional powers asked for could not be granted? Every argument used against Private Bill procedure in 1945 is still valid to-day, and one wonders whether a reversion to this procedure will be welcomed by local authorities and their associations.

Conferences

Local authorities will probably by now have considered Circular 49/49 from the Minister of Health in which a plea was made for less conferences, at longer intervals and with fewer delegates than has become customary hitherto.

The legal background to this topic is contained in s. 267 of the Local Government Act, 1933 (as amended by s. 113 (3) of the Local Government Act, 1948), and the regulations made thereunder, the Local Government (Conferences) Regulations, 1948 (S.I. 1948 No. 1932). These provide that a local authority may send three representatives to annual conferences or to council or committee meetings of the Association of Municipal Corporations, the Urban District Councils Association and the Rural District Councils Association, and two representatives to other conferences or meetings convened by local authorities or associations of local authorities. Parish councils are limited to certain attendances at meetings of their parent county association. Representatives can, of course, be either members or officers of the authority and the expenses of members in attending will be paid under s. 115 of the Local Government Act, 1948.

In fact, the type of conference at which the Minister's circular is aimed is not that convened by associations of local authorities. These other conferences can only be attended by authorities whose accounts are subject to district audit if they receive the Minister's sanction to the expenditure under s. 228 of the Local Government Act, 1933. This sanction, which prevents surcharge, is usually given in "blanket" form for any useful conference, with a limit of two delegates per authority. Thus, although at first sight it looks as though the Minister could easily control the number of delegates attending from each authority and the number of conferences to which approval would be given, his powers do not extend to cases where the authority can charge the expenses of attendance to an account not subject to district audit, as is frequently done.

Stamp Duties—Education

It is understood that the Commissioners of Inland Revenue take the view that conveyances and leases to local authorities, for educational purposes only, can be stamped at the old rate of duty. The increases of duty under Pt. II of the Finance Act, 1947, do not apply, because s. 54 (1) saves, *inter alia*, conveyances, transfers or lettings made . . . to bodies of persons established for charitable purposes only. It is essential, however, that either the conveyance or lease should disclose that it is for educational purposes only or that the

document be accompanied by a certificate to this effect under the hand of the town clerk or clerk of the authority. A recital that the purchase was for educational purposes only, or a conveyance taken expressly to the authority as local education authority, should be sufficient. Care should be taken in cases where relief from increased duty is claimed to see that the denoting stamp is impressed to indicate that the document is correctly stamped (s. 54 (1)).

Where duty has been overpaid, a claim may be made, which should be accompanied by a statement of the reasons for the claim and, where necessary, a certificate.

J. K. B.

A Conveyancer's Diary

PRESCRIPTIVE ACQUISITION OF EASEMENTS

THE Prescription Act, 1832, provides for two periods of enjoyment in the case of all easements other than the easement of light, proof of which will in suitable conditions result in the acquisition by the claimant of the easement in question. The difference between the two periods of twenty years and forty years respectively is not easy to gather either from the Act itself or from the exposition of its provisions to be found in some of the text-books—that, at least, is my impression; and as I had to consider this problem in some detail recently, it may be that my reading of the Act will be of assistance to others who may have to concern themselves with the question.

Section 2 of the Act provides that no claim which may lawfully be made at common law, whether by custom, prescription or grant, to any easement over the land of another (including Crown lands), when the easement shall actually have been enjoyed by any person claiming right thereto without interruption for the full period of twenty years, shall be defeated by showing only that the easement was first enjoyed at any time prior to such period of twenty years; but such claim may nevertheless be defeated in any other way by which the same can be defeated. And the section then goes on to provide that where such an easement has been so enjoyed for the full period of forty years, it cannot be defeated at all ("the right thereto shall be deemed absolute and indefeasible") unless it shall appear that it was enjoyed by some consent or agreement expressly given or made for that purpose by deed or writing.

The form of this section, which is the main provision of the Act as far as all easements other than that of light are concerned, is dictated by the mischief that the Act was intended to cure. What this was appears sufficiently clearly from the preamble: it was the old rule that the prescriptive acquisition of an easement at common law based on continuous enjoyment over a period of time could always be defeated if it could be shown that the easement could not have been enjoyed continuously since time immemorial, i.e., since 1189. This is not the place to examine the origin of this remarkable rule; but this is the rule to which s. 2 of the Act is expressly directed, where it provides that a claim to an easement is no longer to be defeated by showing that the easement was first enjoyed at any time before the period of twenty years commenced to run, that is to say, at some time before the period commenced to run and after 1189.

But a claim based on twenty years' enjoyment can still be defeated under the statute by any other method by which such a claim could be defeated when the Act of 1832 was passed. This saving is expressly made by the Act, and it would appear to be aimed at some other defences that then existed to an action based on prescription at common law. But in fact with one exception (to which I will refer later) there is, so far as I am aware, no such other defence peculiar to the form of claim it was intended to meet; all other defences to a claim to an easement by prescription at common law appear to have been defences capable of being used to counter a claim advanced on a different basis. Such would be, e.g., the defence that enjoyment had been had by force or stealth, or that during the relevant period or some part of it the relationship of the owners of the servient and dominant tenements respectively was that of landlord and tenant (it is only in the somewhat anomalous case of the easement of light, and then only where a claim is based on the Act, that a tenant can acquire an easement against his landlord). But since the section speaks of easements, and expressly requires enjoyment by a person claiming right to the easement he is seeking to acquire, it is clear that such general defences are by necessary implication still open to the owner of the *que* estate, and no express saving of the right of such owner to set up such defences should be required. This means that the saving must have an extremely limited operation, and since s. 2 proceeds to provide that any enjoyment according to the terms of that section for a full period of forty years can only be defeated by proof that the easement in question has been enjoyed by consent or agreement expressly given or made for that purpose by deed or writing, it appears to be fairly clear that the saving made in regard to the shorter period must refer to a consent or agreement not made by deed or writing.

So far as s. 2 of the Act is concerned, therefore, the difference between the two periods of enjoyment of twenty years and forty years amounts only to this: a claim by prescription under the Act based on forty years' enjoyment can only be defeated by proof that at some time during the period the enjoyment was had by consent or agreement by deed or in writing, whereas a similar claim based on twenty years' enjoyment can be defeated by proof of any sort of consent, formal or informal, on the part of the servient owner; in either case one of the more general defences (e.g., that the right claimed is unknown to the law as an easement) can be set up with fatal results. The provision, therefore, in s. 2 whereby a claim based on twenty years' enjoyment can be defeated "in any other way by which the same is now liable to be defeated," in so far as it seeks to point an antithesis between the two periods, has no more than the limited effect described above.

This conclusion is, of course, in no way revolutionary. It follows the opinion of all the books that I have consulted on the subject. But I do not know of any treatise on the Act which brings out the point that I have sought to make, which is concerned with what I consider to be the difficult wording of the saving contained in s. 2 of the Act and its misleading suggestion that some technical defences may exist to a claim based on the shorter period of prescription which, in fact, seem to have no existence at all.

The distinction between the two periods mentioned above is not, of course, the only one that exists. Another difference lies in the effect on enjoyment of an easement of a period of disability in the owner of the servient tenement. Section 7 of the Act provides, in effect, that the time during which the owner of the servient tenement is under any of the disabilities therein mentioned (i.e., infancy, lunacy, etc.) is to be excluded in computing "the periods hereinbefore mentioned, except only in cases where the right or claim is hereby declared to be absolute and indefeasible." It will be recalled that in the case of an easement enjoyed for a period of forty years, and not enjoyed by consent or agreement by deed or writing, s. 2 provides that "the right thereto shall be deemed absolute and indefeasible." The result of these provisions, considered together, is that a period of disability in the servient owner is to be excluded in computing the period of twenty years required for the acquisition of an easement (other than light) under s. 2 of the Act, but is not to be so excluded where enjoyment can be proved over the longer period of forty years.

But even this provision is subject to an exception in the case of a servient tenement which is held for any term of life or years exceeding three years. In such a case the time

during which an easement is enjoyed during the continuance of any such term must be excluded in the computation of the period of forty years, provided that the claim to the easement is resisted within three years of the end or sooner determination of the term by any person entitled to the reversion expectant upon the determination of the term. A reversioner under disability at the time of the determination of the term is not, it would appear, in a better position than a reversioner of full capacity.

Before ending I must stress that the remarks which appear above do not apply to the easement of light, for the acquisition of which by prescription s. 3 of the Act makes special provision.

"A B C"

Landlord and Tenant Notebook

SUB-LETTING BY PROTECTED TENANT AT WILL

THE decision in *Dudley and District Benefit Building Society* v. *Emerson* (1949), 93 SOL. J. 183, has been reversed by the Court of Appeal (*The Times*, 30th June); one might add, without disrespect to the learned judge of first instance, who had a difficult and novel point to consider, "not unexpectedly" (see 93 SOL. J. 213). So the law now is that the tenant of a mortgagor whose mortgage expressly excludes power to grant a lease under the Law of Property Act, 1925, s. 99, is not protected as against the mortgagee, whether it occurs to the tenant to say that the tenancy was not granted under statute at all or not.

It is possible that the decision will contribute towards the solution of another problem which sometimes faces some of us; what is the position when a tenant at will of premises within the Rent Acts grants, or purports to grant, a sub-tenancy? And does it make any difference whether the whole or only part of the premises is so dealt with?

It may be convenient first to examine the position of a tenant at will as regards protection generally. Allowing for the fact that in some cases courts appear to have accepted the parties' own description of the nature of their tenancy rather readily, it can be said that that position has been defined by a number of authorities, some under the old Acts and some under that of 1939. At one time *Ecclesiastical Commissioners* v. *Hilder* (1920), 36 T.L.R. 771, possibly on the strength of its headnote, was treated as authority for the proposition that the Acts do not apply to a tenancy at will at all. The action was against a caretaker who paid no rent in money, and it was because the plaintiffs chose to bring proceedings under Ord. XIV that the court reluctantly treated the parties as landlord and tenant. But it is now generally agreed that Avory, J.'s "... the Act did not apply to *such* a tenancy ..." meant a tenancy reserving no rent in money, not a tenancy at will.

But in *Chamberlain* v. *Farr* [1942] 2 All E.R. 567 (C.A.) a builder who had failed to finish a house pursuant to a contract to finish and sell it came to what Greene, M.R., called an arrangement with the purchaser by which the latter was let into possession of another house, for which he paid 12s. a week, these payments being recorded in a rent book. A summons having been taken out to determine the standard rent, both the registrar and the judge of the local county court thought there was no tenancy at all, and the judge that if there were it was a tenancy at will and not within the Rent Acts. The Court of Appeal held that there was a tenancy, but the learned Master of the Rolls observed that whether it was a weekly one or a tenancy at will did not matter; he would treat it, however, as a tenancy at will, and, when s. 12 (7) of the 1920 Act (excluding properties let at rents less than two-thirds of the rateable value) did not apply, such tenancies were protected.

Then, in *Francis Jackson Developments, Ltd.* v. *Stemp* [1943] 2 All E.R. 601, an intending purchaser of a house, having failed to obtain a building society advance, was let into possession on signing a letter acknowledging a tenancy at will and agreeing to pay a weekly sum "for occupation and use," the payments corresponding to interest at 5½ per cent. on the unpaid balance of the price. It was common ground, in the proceedings taken for possession, that a tenancy at will was within the Acts; the question argued and decided in the defendant's favour was whether he was such a tenant, and thus protected from ejectment.

This case was shortly followed by and distinguished (on appeal) in *Dunthorne and Shore* v. *Wiggins* [1943] 2 All E.R. 678 (C.A.), the facts of which began with the defendant, a widow, wanting to take a house belonging to one of the plaintiffs. The house had a standard rent amounting to 21s. a week; the plaintiff concerned said he did not want to let it, but she could come in as a purchaser. Negotiations resulted in her obtaining a building society advance for part of the price, signing a promissory note for the rest, and agreeing to pay 25s. a week, which payments the plaintiffs agreed to apply to outgoings, interest on the moneys lent, and redemption and reduction of the loans. The agreement provided that she should be allowed to enter as tenant at will and would vacate the premises if any weekly payment were a fortnight in arrear. Trouble started when bugs appeared, and the defendant asked the plaintiffs to effect repairs. (Those who have sat as Poor Man's Lawyers will be familiar with the fallacy underlying the request.) She received two letters from their solicitors, one politely asking to be referred to the provision in the contract obliging their clients to repair, the other giving her notice to quit. In this case it was held that a tenancy had been created; but it was a tenancy without money rent, and the Rent Acts did not apply to it.

These authorities show, then, that there are two kinds of tenancies at will to be considered, those reserving a money rent amounting to two-thirds of the rateable value, and those that do not. I have already pointed out that there are two kinds of sub-tenancies the validity of which may come into question, sub-tenancies of the whole and sub-tenancies of part; so four possible cases have to be gone into.

Now apart from the Acts, sub-letting the whole of the premises by a tenant at will determines the tenancy: *Birch* v. *Wright* (1786), 1 T.R. 378; and in *Roe d. Blair* v. *Street* (1834), 2 Ad. & El. 329, a demand of possession made to the wife of the under-tenant of a tenant at will was held to be sufficient demand (cf. *Fox* v. *Hunter-Paterson* (1948), 92 SOL. J. 618). Assuming, then, that the main difference between the various tenants at will considered in the recent cases and ordinary weekly tenants is that the terms of their grants made the estates conferred inalienable, I submit that the decision of the Court of Appeal in *Dudley and District Benefit Building Society* v. *Emerson* now warrants the proposition that such sub-tenants are not protected as against their superior landlords, who would thus not have to rely on para. (*d*) of Sched. I to the 1933 Act (sub-letting of whole house without consent) and possibly be met by a plea of unreasonableness. This would apply whether the mesne tenant would be qualified for protection or not.

Sub-letting of part, however, is a less easy question. There appears to be no direct authority on the point, and if this is so one would have to consider the fundamental nature of such a tenancy. Its nature is such, for instance, that voluntary waste committed by the tenant determines it: in *Doe d. Mellersh* v. *Redman* (1829), 8 L.J. (o.s.) K.B. 154, a somewhat trivial act of waste—grubbing up a hedge—by an intending purchaser who had been let into possession was held to have this effect. In an earlier authority, the *Countess of Shrewsbury's Case* (1600), 5 Co. Rep. 13*b*, the noblewoman in question sued "one Richard Crompton a Lawyer of the Temple" for damage done to a house which she had let to him as tenant at will; the damage having been

caused by accidental fire, it was held that no action lay. The judgment in this case makes two points which may, I submit, have some bearing on the question under discussion: (*a*) "When tenant at will takes upon himself to do such things which none can do but the owner of the land, these amount to the determination of the will," and (*b*) (drawing an analogy with bailment) "When there is a confidence reposed in the party, the action upon the case will lie for negligence, although the defendant comes to the possession of it by the act of the plaintiff."

On the strength of (*a*), it might be argued that subletting of even part was inconsistent with the grant; while (*b*) justifies the introduction of a fiduciary element of like purport. But here, I suggest, a distinction might be drawn between those cases in which the tenancy at will is one at a rent which is not less than two-thirds of the rateable value, and those in which the rent is nominal. When the arrangement is a business one, the tenant at will himself qualifying for protection, a court should be less loath to extend protection to a lawful sub-tenant of part than it should be when sympathy may have been the motive of the grant, as in such cases as *Buck* v. *Howarth* (1947), 63 T.L.R. 195. In other words, the "will" of the parties can be inferred from circumstances; an intending vendor or building society can be expected to look after itself, and if it grants a tenancy entailing protection, should not be surprised if a sub-tenant of part lays claim to protection too; but the squire who permits some old retainer to occupy a cottage rent free can more plausibly contend that it was not the intention and not in accordance with the will of the parties that some sub-tenant should develop into a statutory tenant.

R. B.

HERE AND THERE

GOOD-BYE THE BOUNDARY COMMISSION

LAST week I stated that the Parliamentary Bar, in this era of lean kine, was subsisting mainly on water. I might have added that if ever the benevolent omnipotence of the all-providing State magicked a water "grid" into existence, nothing but a parched desert with a few prickly cacti or palm-fringed oases would stretch before the dispirited survivors. But even as I wrote there came a fall of manna from Bevan (if one may so express it). In 1945 the Local Government Boundary Commission was established, as a permanent body, by Act of Parliament for the purpose of reviewing and altering local government areas, since when the Chairman, the Deputy Chairman, the three Commissioners, the Secretary, the Private Secretary, the two Assistant Secretaries, the Public Relations Officer, the four First Officers and the ten Second Officers have duly laboured at Devonshire House in Piccadilly, raising the birthrate of official literature by regular annual reports safely delivered into the lap of the Mother of Parliaments. Now the Minister of Health has announced in the House of Commons that it has been decided to repeal the Act and wind up the Commission. It has been realised, it would seem, that the Commission having no jurisdiction to alter the structure of local government, its powers are inadequate and, in mercy, it should be given its quietus. Thus, said the Minister, the position would revert to what it was before the passing of the Act. That meant that private Bill legislation was all that was available to local authorities who wished to secure alterations in their boundaries. He thought they would find on examination that private Bill procedure was no more expensive and tedious than the other.

WORK FOR THE PARLIAMENTARY BAR

WELL may the Parliamentary Bar exclaim: The Ministry has taken away. The Ministry has given back. Blessed be the name of the Ministry. There will be a certain economy for the public purse, since in terms of financial remuneration the Commissioners were rated somewhere between a county court judge and a High Court judge. Nor did even the Second Secretaries go wholly unrewarded. But though the Parliamentary Bar and the Parliamentary agents may gather grapes in the vineyard thus restored to them, nothing can bring back the brave days of fifty years ago. Successful leaders in the High Court might then make their thousands, but Samuel Pope and Balfour Browne, both of Her Majesty's Counsel learned in the law, made their tens of thousands. Hour after hour the committees overflowed with work, sitting straight through the day without adjournment, and in the luncheon hour members and counsel alike would recruit their powers with plates of ham, packets of sandwiches and liquid refreshment from the bars which then stood open throughout the day in the corridors. Even after the practice of luncheon adjournments was introduced, many of the Parliamentary Bar still retained the sandwich habit.

MANNING THE FRONTIERS

THE boundary disputes, of which, on the demise of the Commission, the Parliamentary Committees are the heirs, should prove a substantial supplement to the disputes over water rights. Imperialistic and rate-hungry local authorities have always had a keen eye on the Naboth's vineyards of their smaller neighbours and plausible reasons for extending their Lebensraum. In the past, Glasgow was one of the most voracious, but the committees were not always on the side of the big battalions. True they allowed it to "boa constrict" Partick, an historic burgh on its boundaries, but when it marched on Rutherglen it was met with the spirit and something of the tactics of the Napoleon of Notting Hill, and Rutherglen lives to tell the tale. It lies on the left bank of the Clyde, connected with Glasgow by a bridge, with 25,000 inhabitants against Glasgow's 1,000,000 and £200,000 rateable value against Glasgow's £11,000,000. It has been a Royal Burgh since 1126 when David I granted it a charter, and I am told that none of those who witnessed the scene in committee when its venerable Provost went to the witness table ever forgot it. In his hands the stiff yellow parchment and scarlet seals of the original charter acted like a charm. In one moment of vision eight centuries of history eclipsed all the arguments of the utilitarians and the day was saved. The precedent may be worth remembering in some of the approaching boundary battles. Even to-day? Yes, even to-day. Think only how at this very moment the roses and castles of the barges have got the Inland Waterways Executive on the defensive over a threat to their survival.

RICHARD ROE.

OBITUARY

MR. H. N. JONES

Mr. Henry Nedon Jones, formerly a partner in the firm of Dendy & Paterson, solicitors, of Manchester, died on 18th June, aged 82. Mr. Jones, who was admitted in 1923, had been associated with the firm for more than sixty years.

MR. C. R. SERPELL

Mr. Charles Robert Serpell, senior partner in the firm of C. R. Serpell, Son & Forster, solicitors, of Plymouth, died on 28th June, aged 78. For nearly twenty-five years he was clerk to Plymouth Insurance Committee and he was for many years clerk to Plymouth College Governors. He was admitted in 1893.

MR. F. TITMUSS

Mr. Frank Titmuss, solicitor, of Lower Kingswood, formerly of London and Redhill, died on 1st July, aged 71. He was admitted in 1921.

SOCIETIES

The annual general meeting of the UNITED LAW CLERKS' SOCIETY was held in the Great Hall, Lincoln's Inn, on 28th June. Mr. Edward Jagot was in the chair. The chairman referred with appreciation to the services of Mr. E. W. Church who retired from the committee of management after thirty years' membership. The report and accounts were adopted and the committee was authorised to give further consideration to reorganisation proposals relating to present membership and the admission to membership of women clerks, to life and endowment assurances and to the Hathaway Provident Scheme. Amendments to the rules to extend the use of the benevolent fund and to provide mortgage advances to members were passed. The committee of management, the treasurer and the auditor for the coming year and the stewards for the 1950 anniversary festival were elected.

THE LAW SOCIETY

ANNUAL GENERAL MEETING

We print below the advance text of the address delivered by the President, Sir ALAN GILLETT, to the Annual General Meeting of members of The Law Society held on the 8th July.

LADIES AND GENTLEMEN: In moving the adoption of the Annual Report I propose to follow precedent and to refer only to a few of the many matters with which that Report deals.

THE COUNCIL

In my address to members of the Society at the Special General Meeting held in January last, I referred to the losses which the Council had suffered through the death of Mr. Curtis of Leeds and the retirement of Col. Maynard of Burgess Hill and Mr. Stuart Evans of Bristol. Since then, as you will have seen from the Annual Report which has been circulated, we have suffered two further losses in the retirement of Col. Mackenzie Smith of Sheffield—my immediate predecessor in this Chair, who had been a most assiduous and unselfish attendant at meetings of the Council and its Committees ever since his election to the Council in 1928—and in the resignation of Sir Geoffrey Vickers, V.C., the loss of whose services on the Council we also feel acutely. Sir Geoffrey, as very many of you know, is a man of outstanding ability and it is sad that the calls upon his time as a member of the National Coal Board have been such that he has with reluctance decided that he cannot give that attention to the work of the Society which Council members must give if they are to play their full part in advancing the interests of the profession. I am sure I speak for all of us when I thank them both warmly for their services to us in the past and wish them well for the future.

COMMITTEE WORK

If you have studied, as I hope you have, the record of our work on the Council during the past year, you will have seen that, as has been the case in recent years, the field of our activities has been wide indeed. I know that the mere holding of Committee meetings is not in itself any proof of work done, but it may perhaps be worthy of note that in this last year we have held twice as many Committee meetings as were held in 1938, which in its turn was a year by then previous standards of considerable activity.

After the last Long Vacation we introduced a new scheme with a view to spreading the burden of Committee work more evenly over Council members and at the same time easing their burden in so far as we could without interfering with either the quantity or the quality of the work to be done. We arranged that membership of Committees of the Council should be of two kinds—Standing Membership and Additional Membership. Standing members of Committees are expected to attend the meetings of their Committees and every Council member, whether he be from London or the Provinces, is a Standing member of two or more of the Standing Committees of the Council. In addition Council members are Additional members of a varying number of other Standing and Special Committees and as such receive all the agenda so that they may keep themselves informed of what is being done, and may attend meetings of those Committees if and when they can, but without being under any obligation to be present.

We have also attempted to arrange the times of Committee meetings as far as possible so as to suit the convenience of the Provincial members of the Council, some of whom have long distances to travel, and we have therefore fixed as many meetings as possible on Council meeting days and on the afternoons of the day immediately preceding a Council day.

Furthermore, we have added to a number of the Committees of the Council members of the Society who are not Council members, but who have been good enough to agree to assist in the work of the Society in this way. I would like to express here and now to all these members my sincere thanks for the help which they have given to the Society and the profession in this way.

MEMBERSHIP

One of the most important subjects and one therefore that is always placed in the forefront of our Annual Report is the membership of the Society.

Finance is our life blood and without it The Law Society cannot do for the profession what it ought to do. But perhaps even more important still in these days is the need for unity in the profession. The nearer we attain to our target of 100 per cent. voluntary membership, the stronger becomes our power to promote the interests of our members. I am glad indeed, therefore, to be able to tell you that the number of our members has risen steadily during the past year and that on the 31st May, 1949, it was 14,056—that is to say, it showed an increase of more than 500 during the year.

The campaign which the Council have been conducting with the active help of the Provincial Societies has not, therefore, been without success. It is essential, however, that we should not relax our efforts if we are to attain that 100 per cent. membership figure. There are nearly 2,000 *practising* solicitors who are still not members of the Society and there must be even more solicitors who do not hold practising certificates, who have not yet joined. I urge every member to do his best to recruit at least one new member of the Society and in particular to encourage newly admitted solicitors and assistant solicitors to join and thereby to support their own professional organisation.

LEGAL AID AND ADVICE

The Legal Aid and Advice Bill has now passed through all its stages in the House of Commons and its passage into law seems to be assured.

I am sure that we all recognise the obligation that this measure will lay upon us to show that our great profession, acting through The Law Society with the co-operation of the General Council of the Bar, can provide the public with the help and assistance they need, while maintaining that independent status which is so vital to the proper exercise of our functions as practitioners.

The Bill, as you know, has received a warm welcome from all political parties in the House of Commons.

You will have seen in the Annual Report at pp. 14 and 27 a brief outline of the work that we are doing in anticipation of the Bill becoming law. I would urge you to read not only what is said in the Annual Report on this important topic but also the fuller explanation of the proposals which is to be found in Mr. Lund's published lecture on the subject, so that when the time comes to carry out the duties to be imposed on the profession we may not fail in our task through lack of preparation for or understanding of the scheme.

POOR PERSONS PROCEDURE

Although the Poor Persons Procedure will in time be replaced by the Legal Aid and Advice Scheme, that time is not yet and we must continue the existing procedure until at least the summer of next year.

The Report on the working of the procedure during 1948 is contained in the appendix to the Annual Report. It is a worthy record of unselfish service by the profession to the public, and thanks are due to all those who have contributed to the success of the procedure, whether as members of Poor Persons Committees, conducting solicitors or counsel.

The Report shows a satisfactory position as regards arrears and particularly so in London. I make no apology, however, for stressing once again that it is important in the coming months to dispose of as many as possible of the applications under the present procedure, so as to make as easy as may be the transitional arrangements for the replacement of the existing procedure by the new scheme.

PROVINCIAL MEETINGS

You will have read the very short reference in the Annual Report to the Provincial Meeting which we held at Brighton last September. A permanent record of the proceedings at that meeting has been published and made available to members generally, and I can assure all those who were not able to be present at the Brighton Conference that it was an unqualified success.

Although the number of those attending—between four and five hundred—was the largest which has ever attended a Provincial Meeting of the Society, the Council hope that those numbers may be considerably exceeded in future. The reasons for this hope are not only that the content and substance of the Brighton programme was found to be agreeable to the members generally, but that the proceedings enabled members to acquire knowledge of what the Council do, and at the same time enabled the Council to ascertain the views of members and elicited many constructive suggestions and ideas for the future.

We have been fortunate in being able to arrange through the good offices of our colleagues who practise in Blackpool to hold the next Provincial Meeting there from the 20th to the 24th September, 1949. We propose to adopt at Blackpool the same

scheme as we did at Brighton and to discuss the work of six of the Committees of the Council. We shall be very glad indeed if members who attend will come and express their views, and feel free to bring with them the ladies who accompany them. Especially we would like the views of the ladies at the Committee which will be considering the arrangements for Provincial Meetings, because our wish is to make these Provincial Meetings really live general meetings of members of the Society, where any questions may be asked and the answers may be given by the Chairmen of the Committees themselves, who are fully seized of the work of their own Committee. At the same time, we can all meet each other out of school and get to know each other as individuals very much better at these Provincial Meetings than we have ever been able to do in the past.

I do hope that all of you will make a note of the date of the Blackpool Meeting and let us know at The Law Society as soon as possible that you will be attending by completing the registration forms which have already been sent out to members.

Remuneration in Non-contentious Matters

The position of solicitors' remuneration in non-contentious business is frankly disheartening and the Council are giving serious consideration to the next step to be taken. In my address delivered to the Special General Meeting in January, I said that the Lord Chancellor had only just communicated to me the Government's view that no increase in solicitors' remuneration could be allowed at that time in view of the policy set out in the White Paper on personal incomes, costs and prices. I also said that the Council were reconsidering the matter in the light of the White Paper policy which they had not regarded as applicable to the case put forward. Finally (and I am very much aware of the fact in view of recent developments such as the present increases in wages and salaries granted to the police, post office workers and cotton spinning operatives and of the future increases promised to civil servants in the higher grades) I said that if the Government should agree to increases in the remuneration of other substantial bodies of persons whether professional or otherwise this would certainly provide grounds for the Council to press for an immediate reconsideration of the present attitude towards an increase in solicitors' remuneration.

The Council took careful note of the strong views expressed by members at the Special General Meeting and I sent a letter to the Lord Chancellor pointing out that in our view the White Paper had no application to the claim made as it was directed to increases in wages and salaries whereas the Council's claim was for higher gross receipts so as to enable the profession to meet vastly increased but essential expenditure on staff salaries and other running costs of business. I also said that in view of the requirements of the Legal Aid and Advice Scheme and the necessity of attracting to the profession a substantial number of young men and women of the right type, the Council's claim would in any event, even if the White Paper would otherwise apply, be justifiable under para. 7 (*d*) which recognises that increases in wages and salaries are warranted if they are in the national interest and makes particular reference in this respect to undermanned industries. I ended my letter by adding that the Council had been at pains to restrict the amount of their present claim so as not to conflict with the White Paper policy but that we did not intend to waive our right to submit in due course, when the present policy changes, that having regard to the increase in solicitors' remuneration of only 50 per cent. since 1882, there are good grounds for substantially increasing the net remuneration as such.

The Lord Chancellor's reply to my letter has, I am afraid, carried the matter no further as it is merely to the effect that he has thought about the matter most carefully in the light of my letter but would prefer to deal with it in the way suggested in his letter of the 14th January, namely, to reconsider the whole question later in the year, by which time he hopes that circumstances will be more favourable to The Law Society's claim. In acknowledging this last communication from the Lord Chancellor I have pointed out to him that had it not been for the boom in the sale of land the profession would by now be in a very serious state; that the boom is ending not only in regard to the price at which land is being sold but also in regard to the quantity of land being dealt with and that there is throughout the country a serious anxiety as to the remuneration of the profession.

Minimum Scales of Conveyancing Charges

It you will refer to p. 41 of the Annual Report, you will see that we are taking steps towards the making of a new rule under s. 1 of the Solicitors Act, 1933, designed to secure the enforcement of minimum conveyancing charges, a course of action for which the Council have been given a strong mandate by the Provincial Law Societies. The Associated Provincial Law Societies passed a resolution to this effect before the war, namely, in December, 1937; since then the feeling has strengthened and at the conference of Presidents and Secretaries of Provincial Law Societies held in London in May of this year a resolution was passed by an overwhelming majority to the effect that the Council should draft Minimum Scale Rules, which should be applicable to all land throughout the country (excluding land in the London area); that these rules should then be circulated for comment to all Provincial Law Societies, who should be given a month or two to consider them; and that, after revision in the light of any observations received, they should be submitted to the Master of the Rolls for approval if the Courts hold that they would be *intra vires* the Act.

As I believe this to be the first occasion since the war on which the subject of minimum scales of costs has been mentioned in a Presidential address at a General Meeting of members, I think I should explain why the Council favour the making of such rules and why I have added the proviso as to the Courts holding the rules to be *intra vires*. I feel I need to make no apology for dealing with this important matter at some length.

Under r. 2 of the Solicitors Practice Rules, 1936, made under the 1933 Act, it is professional misconduct for a solicitor to hold himself out or allow himself to be held out as being prepared to act in a conveyancing transaction in respect of unregistered land at less than the scale of charges (if any) prevailing in the district where the land is situated or, if there is no such scale, at less than two-thirds of the full scale chargeable under the Solicitors Remuneration Orders. There is at present, however, no rule enforceable by disciplinary proceedings which prevents a solicitor from actually charging (as distinct from holding himself out as being prepared to charge) less than a certain minimum. Rule 2 of the Solicitors Practice Rules does not, in the Council's view, apply, for example, to a charge made by a solicitor to an existing client; nor does it prevent an undercharge in other cases if there has been no express or implied agreement to this effect. There are, it is true, local minimum scales laid down by well over half the Provincial Law Societies. These scales are not, however, enforceable by The Law Society except in so far as they may affect the scale prevailing in the district for the purposes of r. 2. The scales do not bind solicitors who are not members of the local Law Societies concerned, and they rely for whatever sanction they may possess on action taken by the local Law Society.

Most Provincial Law Societies feel that in general it should be an offence (subject to certain exceptions) for a solicitor to reduce his charges below a certain minimum.

While the making of new Practice Rules on the lines suggested will not in any way prevent a solicitor from making the full charge to which he is entitled under the Solicitors Remuneration Orders, it will ensure that he is not forced to accept a charge which does not adequately remunerate him and may even be unfair in its effects on his colleagues.

Rules made by the Council under s. 1 of the Solicitors Act of 1933 require the approval of the Master of the Rolls before coming into effect. The Master of the Rolls was approached on this subject in 1939, but as conflicting opinions had been expressed by Counsel on the question whether the rules would be *intra vires* the Act, the then Master of the Rolls said that he would not be prepared to approve such rules unless and until the Courts had pronounced on their validity. To obtain such a declaration it is necessary to proceed in the Chancery Division by way of originating summons, and Counsel has expressed the view, with which Lord Greene agreed, that the Courts will not make a declaration as to the validity of any proposed rules unless the draft rules are appended to the originating summons with a statement by the Master of the Rolls that he will be prepared to approve such rules if held *intra vires*. Lord Greene said, however (and I have no reason to suppose that the present Master of the Rolls will have different views), that he would not make this statement until he had considered what minimum scales the rules were to enforce, and in this connection he expressed the view that there ought to be not more than four or five different minimum scales for the whole of England and that, where the circumstances and conditions were the same, the scales should be the same. Lord Greene also stated that he would not be prepared to approve Minimum Scale Rules unless the scale to be enforced was substantially lower than the full scale under the Solicitors Remuneration Orders, as he thought that a solicitor who charged his client only slightly less than the statutory maximum could not be said to have acted so disgracefully as to warrant an application to the Disciplinary Committee to strike his name off the Roll. On the

other hand, he said, it was not in the public interest that solicitors should so reduce their charges as not to be able to maintain a proper standard of living, for under such conditions misappropriations of clients' moneys were apt to occur. *Prima facie*, therefore, there was a case for prohibiting the making of charges below a certain limit, and Lord Greene said that he would be influenced as to what that limit should be (it being less than the full scale charge) by the views of the profession itself.

The views of the Provincial Law Societies seem to have been crystallising rapidly on this point in favour of a scale which is 85 per cent of the maximum, and a large number of Provincial Law Societies has adopted such a scale either for immediate use or in principle. It is, moreover, broadly speaking, the view of the Presidents and Secretaries of the Provincial Law Societies that there should be a single minimum scale for the whole of the provinces.

What the Council are therefore considering at the present time is the making of a practice rule of general application throughout the provinces to enforce a minimum scale charge of 85 per cent. of the full scale relating to unregistered land.

In this connection, finally, I would add a word about land in the London area. As I mentioned earlier the present suggestion is that such land should be specifically excluded from the operation of the proposed Minimum Scale Rules. This is because there has in the past been no demand voiced for minimum scales in the London area. If, however, the rules to which I have referred are eventually made and the majority of London solicitors should at any time wish land in the London area to become subject to these rules the Council would naturally give consideration to the extension of the rules to the London area.

Retirement Benefits

The next subject which I want to mention specially is the tax treatment of retirement benefits, which is a matter, I think, of supreme importance to the profession generally. I hope and, indeed, expect that members will all have read the memorandum submitted to the Chancellor of the Exchequer by The Law Society and the Institute of Chartered Accountants, which is printed *in extenso* at p. 95 *et seq.* of the Annual Report. I do not want to repeat what is set out in that memorandum, which I think is clear, concise and quite incontrovertible.

We realise that it is not only the professions of solicitor and chartered accountant which are affected, but we feel that if jointly with the accountants we can satisfy the Chancellor of the Exchequer that we have a good case in the public interest and can work out with him some suitable scheme or schemes under which the very serious effects on our two professions which the present incidence of taxation produces may be avoided, then the result of our work would very largely enure for the benefit of other professions whose position may equally be affected, though possibly not to the same extent as are ours.

Admission Ceremonies

Some of us have for some time felt that the present method by which a newly admitted solicitor enters the profession is undignified and unnecessarily secretive. When the possibility of a more formal admission ceremony was put forward at the recent meeting with the Provincial Presidents and Secretaries, it was evident that this view was generally shared by those attending the meeting. The Council have now referred this proposal to a Special Committee to consider how the admission of a solicitor may worthily symbolise his or her entry into an honourable profession.

Solicitors' Managing Clerks

The Joint Committee of the Society and of the Solicitors' Managing Clerks' Association have published the syllabus of the Examination for solicitors' managing clerks which will lead to the grant of a certificate of ability. Examinations will be held and certificates will be granted in both specialised and general subjects. Provision has also been made whereby managing clerks who can prove long experience will be able during the first year or two after the introduction of the Examination—and the first Examination is to be held in November next—to apply for the award of somewhat similar certificates without the necessity for taking the Examination. The closing date of entry for the first Examination was the 1st July, but any managing clerk who was too late for the first Examination can apply to the Solicitors' Managing Clerks' Association for particulars of later Examinations.

I hope that the issue of Managing Clerks' Certificates will in the process of time enhance the dignity of the position of Managing Clerk and that it will provide an incentive to the young clerk entering a solicitor's office to improve his education and his knowledge of the practice and procedure in whatever branch of the law he may be employed upon, so that he may in time qualify by examination to earn his right to be described as a solicitor's managing clerk.

International Bar Association

And now I want to say a few words in connection with the paragraph on p. 31 of the Annual Report under the heading "Overseas Relations Committee." The Law Society (and, I may add, the General Council of the Bar also) is a member of the International Bar Association, and that being so, any member of The Law Society is entitled to attend conferences organised by the International Bar Association and The Law Society itself is entitled to ten representatives who may take part in and vote at the meetings of the House of Deputies, which are in effect the General Meetings of the Association.

Last August the International Bar Association held a very interesting conference at The Hague, which was attended by lawyers from fifty-five nations. The Hague Conference was held on the invitation of the Netherlands Bar Association and I attended that conference at the head of a strong delegation from The Law Society.

The International Bar Association have now accepted an invitation tendered by The Law Society and the Bar Council to hold their next conference in London in July, 1950. We hope that a great many lawyers from the Dominions and from many other nations overseas will attend that conference and that members of The Law Society will come in strength to support it both by making their contributions to the discussions of the various matters which will be debated in Committee, and by assisting to entertain the many lawyers and their ladies who, we hope, will be coming from overseas. Fuller particulars will be published as soon as the arrangements have been advanced sufficiently.

Accountants' Certificates

There is a reference on p. 35 of the Report to the large number of reminders which had to be despatched in December last to solicitors from whom accountants' certificates had not been received on or before the 15th November, 1948. I wish to make an appeal to all members to assist us in this matter of the delivery of accountants' certificates. We carefully framed the Act so that accountants' certificates need *not* be lodged at the same time as the applications are lodged for the issue of annual practising certificates. Every year in the fortnight preceding the 16th November, the staff have to deal with between 12,000 and 15,000 applications for the issue of practising certificates. We did not want them to have to tackle another 12,000 to 15,000 accountants' certificates during the same period. Accountants' certificates may be lodged at any time during the practice year, and I do appeal to you all to get your accountants to give you the accountants' certificate directly the accounts have been made up at the end of your financial year and then to send those accountants' certificates in to The Law Society at once.

A few statistics, and only a few, I hope will illustrate this point. For the practice year 1946–47 approximately 12,000 accountants' certificates were lodged. By the 31st October, 1948, only 4,867 certificates had been lodged. In the following fortnight, that is to say, in the first fortnight in November, 1948, 2,746 certificates were lodged with the office. During the following fortnight, when the staff was under great pressure in issuing the practising certificates, an additional 2,495 accountants' certificates were delivered.

All these accountants' certificates have to be marked off on the Practice Rolls, against the names and addresses of the solicitors to whom they relate, and if the delivery of accountants' certificates coincides every year with the applications for and issue of practising certificates, it places a quite unnecessarily severe burden on an already overworked staff. Will you please send in your accountants' certificates as early as possible during the practice year instead of at its conclusion, or, indeed, later.

Salaried Solicitors

I do not propose to reiterate the activities of the Salaried Solicitors Committee which are referred to in the Report. I would, however, like to say that our efforts to obtain recognition as an appropriate body to discuss with employers' organisations the proper remuneration of salaried solicitors have by now met with a limited measure of success. Representatives of the Council have been invited to give (and have in fact given) evidence before the Special Salaries Grading Sub-Committee of the National Joint Council for Local Authorities, Administrative, Professional, Technical and Clerical Services, and it is hoped that the informal recognition accorded by the British Electricity Authority and the Electricity Area Boards which is referred to at

p. 38 of the Report will in due course be followed by other nationalised industries.

We have also found that we can be of real help to solicitors employed in the Civil Service and we are still continuing to press for the granting of " added years " in computing the pensions of solicitors employed in the Civil Service inasmuch as, through the exigencies of the service, they are recruited at an age when they cannot possibly qualify for maximum pensions without the grant of " added years."

Costs of Litigation

You will observe from the Report that during the course of the past year we have submitted no less than eight Memoranda to the Supreme Court Committee on Practice and Procedure; and in saying this I am not including the four Memoranda set out in the appendices which were submitted by the Joint Committee of the Bar Council and The Law Society. While I hope that you will find that none of these Memoranda is without interest, I imagine that the two Memoranda on Solicitors Remuneration will have the most general appeal and that the Memorandum on Civil Business on Assize will also be of special interest to provincial members.

The Council lose no opportunity of making it clear to the Supreme Court Committee that solicitors are underpaid rather than overpaid for the work which they do in litigation and that any reduction in the cost of litigation should be achieved through simplifying and thus cheapening the procedure. The Council's view is that this can best be achieved by the fixing of dates for trial in all civil cases (whether in London or on Assize) and by having a more robust summons for directions at which the issues may be clarified and at which the Judge (or possibly the Master or Registrar) should determine upon what points evidence will be required at the trial and whether the case is suitable for the briefing of a Leader.

The Memorandum on Civil Business on Assize is too lengthy for inclusion in the Report, but you will see a summary of the proposals set out in the appendices. So that there may be no possible misunderstanding, I would like to take the opportunity of stressing the fact that the Memorandum was submitted to the Supreme Court Committee on the basis that it was intended as a sketch plan giving only a general illustration of the way in which a reorganised scheme for Civil Business on Assize might be developed; that no local consultations have taken place; and that any decision as to the actual towns fixed must be the subject of further consideration.

Conclusion

And now, Ladies and Gentlemen, I come to the end of my remarks.

The happenings of the past year have been unique in the history of the Society. The advent of the Legal Aid and Advice Bill alone has been an event of fundamental importance, carrying as the Bill does implications of changes of a most far-reaching character for the benefit of the nation and for the advancement of the position and prestige of the Society.

Apart from this, the Society took a prominent part in the Conference held at The Hague last August under the auspices of the International Bar Association, to which I have referred earlier. One of the most interesting features of that Conference was the fact that the delegates attending included many distinguished lawyers from the Commonwealth. This opens up, in my opinion, a prospect which might lead to results of great value; I consider that this Society should seriously consider organising in the near future a conference of lawyers drawn from the Dominions and Colonies to examine legal problems of concern to them and the Mother Country. Such conferences might be held thereafter from time to time either here or elsewhere in the Commonwealth, and the opportunity which they would provide for making better understanding and friendly relations will be abundantly apparent to you. The wider aspects of such legal problems might in turn be fruitful subjects for examination internationally.

It may well be that, although by force of circumstances we have already seized the opportunity of taking part in international conferences, a better course for making real progress would be found if we were at no distant date to make sure of our legal relationships within our great Commonwealth and to study the operation of our laws. Having done so we would put ourselves into the best position to discuss cognate problems from an international aspect at a later stage.

Since the end of the year covered by the Annual Report, the adoption of which I am moving, we have taken part in a most interesting and informative conference with our legal friends in France. This was held in Paris from the 6th to the 12th June, 1949, and, as regards both the discussion of legal subjects and the public relations point of view, can be counted a real success. The reception of our delegation there was made a State affair and great importance attached to the Conference.

Some may question whether these excursions into the international domain are of value. I believe that they are. They form a real contribution from our profession to the improvement of legal knowledge and friendly relations. Be that as it may, it is scientifically and historically true that no section of the community or any profession can remain alive and progressive unless it projects its thought and energies towards promoting the welfare and stimulating the ideas of others: in so doing it quickens its own life.

And now, I formally move the adoption of the Annual Report.

NOTES OF CASES

COURT OF APPEAL

JUSTICES' JURISDICTION: HUSBAND RESIDENT IN SCOTLAND

Macrae *v.* Macrae

Bucknill and Somervell, L.JJ., and Wynn Parry, J.
6th May, 1949

Appeal from the Divisional Court (93 Sol. J. 88; 47 L.G.R. 139).

Manchester justices ordered the respondent husband to pay the appellant, his wife, 30s. a week maintenance on her complaint of his desertion of and persistent cruelty to her. No question of jurisdiction was raised before the justices, but the husband appealed to the Divisional Court, contending that they had no jurisdiction to make the order because he was at all material times ordinarily resident in Scotland. The Divisional Court upheld that contention, explaining that *Forsyth* v. *Forsyth* [1948] P. 125; 91 Sol. J. 691, was not limited to cases where the husband was domiciled in Scotland. The wife appealed.

Somervell, L.J., said that *Forsyth* v. *Forsyth*, *supra*, covered the present case if the husband was ordinarily resident in Scotland. The husband had left the matrimonial home in Manchester and gone to Inverness where his former home was and where his mother lived. He had then stated that he intended to settle there, and in a letter to his wife described in detail the arrangements which he was making for providing himself there with a home. Ordinary residence could be changed in a day. A man was ordinarily resident in one place up till a particular day when he cut the connection which he had with that place. Where there were indications that the place to which he had moved was the place where he intended to make his home for, at any rate, an indefinite period then, as from the date when he moved, he was ordinarily resident at the place to which he had gone. The husband argued that the justices would have had no jurisdiction even though the presence of the husband in Scotland fell short of ordinary residence. The court would have required to hear more argument before they accepted that proposition. There were two kinds of case to be borne in mind where the issue was jurisdiction: the case where the court would have jurisdiction if the defendant were served in this country (the ordinary case of an action *in personam*) and the case where, although the defendant could be found in this country and served, yet there might be no jurisdiction (the case of a petition for divorce where the husband was domiciled in another country). It was not clear either on general principle or, in particular, from the wording of s. 6 of the Summary Jurisdiction (Process) Act, 1881, which concerned the somewhat similar position in bastardy, that the court here would not have jurisdiction to hear a case where the husband, though in Scotland, was there in circumstances which fell short of ordinary residence. That issue must be left to be determined when it arose.

Bucknill, L.J., and Wynn Parry, J., agreed. Appeal dismissed.

Appearances: *John Mortimer* (*Pritchard, Englefield & Co.*, for *Boote, Edgar & Co.*, Manchester); *Harris Walker* (*Mackrell, Ward & Knight*).

[Reported by R. C. Calburn, Esq., Barrister-at-Law.]

NULLITY: WILFUL REFUSAL AS CONTRIBUTORY CAUSE OF NON-CONSUMMATION

Morgan *v.* Morgan

Bucknill, Asquith and Denning, L.JJ. 10th May, 1949

Appeal from Judge Field, K.C., sitting as a Divorce Commissioner.

A husband suffered from epilepsy. His wife had, a short time before the marriage, been in a home for the feeble-minded, but was not certified. The husband petitioned for nullity under s. 7 (1) (*a*) of the Matrimonial Causes Act, 1937, on the ground of the wife's wilful refusal to consummate the marriage. The commissioner found that there was wilful refusal by the wife and that the husband was impotent. On those findings he held that the wilful refusal of the wife was not the cause of non-consummation, and dismissed the petition. The husband appealed.

BUCKNILL, L.J., said that there was in his opinion no evidence that the husband was impotent. Accordingly, there was a presumption of normality. In fact, however, there was evidence of his potency. Therefore, on the commissioner's finding of wilful refusal by the wife, the husband was entitled to a decree of nullity.

ASQUITH, L.J., agreed.

DENNING, L.J., said that in his opinion the husband was entitled to a decree even on the commissioner's findings. Had the husband in fact been impotent, the wilful refusal of the wife to consummate the marriage would still have been a cause—one of the causes—of the non-consummation. It was not necessary that it should be the sole cause. It was immaterial that there might be another, namely, the impotence of the husband. Appeal allowed.

APPEARANCES: *Guy H. Dixon* (*Rye & Eyre*, for *Sydney Payne & Troath*, Leicester).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

SHIPPING: FOREIGN SHIPOWNER'S ACTION AGAINST CREW

Canadian Pacific Railway Co. *v.* Gaud and Others

Tucker and Singleton, L.JJ. 11th May, 1949

Appeal from Sellers, J.

The respondent company's ship was in dock in London when a trade dispute broke out, in consequence of which the crew would neither work the ship nor, when ordered to do so, leave her. They received that order after the master had discharged them, a step which he took after being in communication with the port superintendent of the Ministry of Transport with a view to obtaining his sanction to the discharge of the crew, as required by s. 284 of the Canadian Shipping Act, 1934. The master was informed that that official was not permitted to assist in complying with the formalities required by the Canadian Act. Sellers, J., granted the shipowners an interlocutory injunction, in their action for damages for trespass and breach of contract against the crew, who now appealed.

TUCKER, L.J., said that s. 284 (1) of the Canadian Act of 1934 was absolute in its terms and that the master of a ship would be guilty of a serious offence under the Act if he failed to obtain the sanction of the "proper authority" of the port to the discharge of the seamen. It seemed a necessary implication from subs. (3), however, that the master established that no offence had been committed if he proved that that sanction could not be obtained or was unreasonably withheld. The Canadian Act could not compel the port superintendent to act, and the evidence showed that he was not permitted by the Minister of Transport to act. The courts of this country undoubtedly had jurisdiction to entertain the present dispute, and the peculiar nature of the contract between sailor and shipowner and the Canadian legislation regulating it were considerations relevant only to the question whether the court should in its discretion grant an injunction. The fact that the order of Sellers, J., would involve expelling Canadians from a Canadian ship was a factor for the court to consider when exercising its discretion; but it must also consider whether, if the evidence showed that the men were trespassers, they should be allowed to continue their trespass to the prejudice not only of the shipowners, but also of the Port of London Authority and those seeking to be supplied with the food which the ship was bringing to this country. It was quite impossible to say that there was no evidence on which the court below could reasonably hold that the balance of convenience was in favour of granting the injunction. It was impossible to interfere with the exercise of discretion by Sellers, J. The appeal must be dismissed.

SINGLETON, L.J., agreed. Appeal dismissed.

APPEARANCES: *Dudley Collard* (*Gaster & Turner*); *Sir William McNair*, K.C., and *Mocatta* (*William Crump & Sons*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

CONSTRUCTIVE DESERTION: CONDUCT SHORT OF CRUELTY

Edwards *v.* Edwards

Bucknill, Cohen and Asquith, L.JJ. 2nd June, 1949

Appeal from Mr. Commissioner Grazebrook.

The appellant husband petitioned for dissolution of marriage on the ground that his wife, the respondent, had deserted him. The wife in her answer prayed for a judicial separation on the ground of her husband's cruelty and desertion. The petition, dated 5th March, 1948, alleged desertion without cause for three years previously, in fact since 1930. The wife in her answer alleged, first, physical cruelty and, as a second head of cruelty, that the husband, from 1923 to September, 1930, was often associating with other women, and, in particular, with one, causing the wife much distress. She alleged desertion from 1932. The court rejected both prayers. The husband appealed.

BUCKNILL, L.J., said that the commissioner had been satisfied that the wife left her husband by reason of some treatment of his; that to that extent she was justified in leaving him; but that subsequent events had to a great extent wiped out any complaints which she then had. It was argued for the husband that it was not open to the commissioner to find that the wife had justification for leaving her husband once he had decided that he was not satisfied that her case of cruelty had been made out. It was plain that Lopes, L.J., was in *Russell* v. *Russell* [1895] P., at p. 334, saying in effect that the husband there had failed to make out a case of cruelty against his wife, but that nevertheless her conduct towards him would prevent her from contending that his desertion was without cause. In other words, there could be cause for desertion which fell short of legal cruelty. Gorell-Barnes, J., in *Oldroyd* v. *Oldroyd* [1896] P., at p. 184, interpreted *Russell* v. *Russell*, *supra*, in the Court of Appeal as so deciding. Those two cases laid down that proposition of law. His lordship cited *Buchler* v. *Buchler* [1947] P. 25, at pp. 30 and 45; 91 SOL. J. 99; referred to Hodson, J.'s statement in *Barker* v. *Barker* [1949] P. 219, at p. 225; 93 SOL. J. 88, that, in reference to conduct which was either cruelty or not cruelty, it was not open to any court to say: "This is not cruelty, but it is so near it that it amounts to a grave and weighty matter justifying separation," and said that it was argued for the husband that that was his case, and that, the commissioner having found that he was not cruel, there was no justification for his wife's leaving. If Hodson, J., meant to say that, once there had been failure to establish a charge of cruelty, it was impossible for a wife to establish grounds justifying her refusing to live with her husband, that was inconsistent with the decisions above cited. In his (Bucknill, L.J.'s) opinion, however, what Hodson, J., had meant to say was that either the blows inflicted by the husband on the wife amounted to cruelty in that they injured her health or were likely to injure her health, or they were not of such a nature; and that, if they were not, then, there being no other evidence in the case before him at all, the court ought not to say that, although they were trivial blows in effect, they justified the wife in leaving her husband. The point of law raised for the husband here accordingly failed. His lordship also held that the appeal failed on the facts.

COHEN and ASQUITH, L.JJ., agreed. Appeal dismissed.

APPEARANCES: *Silkin* (*Silkin & Silkin*); *Reader Harris* (*J. Cory Holcombe*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

KING'S BENCH DIVISION

DIVISIONAL COURT

ROAD TRAFFIC: THIRD-PARTY INSURANCE

Marsh *v.* Moores (P.)
Same *v.* Moores (J.)

Lord Goddard, C.J., Birkett and Lynskey, JJ.

6th May, 1949

Case stated by Cumberland justices.

The second defendant, an employee of a limited company, was duly authorised by the managing director to make a journey in a motor car belonging to the company. In the course of making that journey, and without deviating from the proper route, the employee allowed the second defendant, his cousin, a girl of seventeen years who had never held a driving licence, to take the wheel by way of receiving a driving lesson. The employee sat next to her ready to operate the handbrake if necessary. The presence of the cousin in the car was authorised by the managing director, but he did not know of or authorise the permission given to her to drive. The employee was licensed to drive and

the journey was within the uses of the car specified in the insurance policy in force in respect of it. The insurers undertook to " indemnify the insured in the event of accident caused . . . in connection with " the car " in respect of death of or bodily injury to any person . . . " The insurers were stated not to be liable if the car was " being driven with the general consent of the insured by any person who to the insured's knowledge " was not qualified to drive. The extended cover given by the policy to drivers of the car did not include the girl because she was not qualified to drive. The justices dismissed informations preferred against the employee for permitting, and his cousin for making, use of the car which was not covered by insurance against third-party risks, in contravention of s. 35 (1) of the Road Traffic Act, 1930. The prosecutor appealed. (*Cur. adv. vult.*)

LYNSKEY, J., asked to read the first judgment, said that no offence had been committed because the passenger's personal liability as a driver of the car was not covered by the insurance. *Ellis* (*John T.*), *Ltd.* v. *Hinds* (1947), 91 SOL. J. 68 ; 63 T.L.R. 181, showed that it was a sufficient compliance with s. 35 (1) that a driver's use of the car should be covered by the prescribed insurance. The employee was the duly appointed driver of the car. By sitting beside his cousin, ready to apply the handbrake as she drove, he retained the control and management of the car and some power to control its driving. In that sense he remained the driver of the car and was to that extent acting within the scope of his employment, though in an unauthorised and improper way. Consequently, if an accident had happened through the girl's faulty driving, the employee would have been at least in part responsible ; and, as he was acting within the scope of his employment, the company would have been vicariously liable for his negligence. Such a liability was covered by the policy, since the company were not privy to the permission given to the girl to drive. The person driving the car with their general consent was throughout only their employee. Therefore, no insufficiently insured use of the car had taken place and no offence had been committed.

LORD GODDARD, C.J., and BIRKETT, J., agreed. Appeals dismissed.

APPEARANCES : *C. Q. Henriques* (*Sherwood & Co.*, for *G. N. C. Swift*, Carlisle) ; *Glynn Blackledge* (*Jaques & Co.*, for *North, Kirk & Co.*, Liverpool).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

SURVEY OF THE WEEK

HOUSE OF LORDS

A. PROGRESS OF BILLS

Read First Time :—

Adoption of Children Bill [H.C.]	[27th June.
Barnsley Corporation Bill [H.C.]	[27th June.
Cockfighting Bill [H.C.]	[27th June.
London County Council (Money) Bill [H.C.]	[27th June.
Married Women (Maintenance) Bill [H.C.]	[27th June.
Married Women (Restraint Upon Anticipation) Bill [H.L.]	[28th June.

To render inoperative any restriction upon anticipation or alienation attaching to the enjoyment of property by a woman.

Mersey Tunnel Bill [H.C.]	[27th June.
Slaughter of Animals (Scotland) Bill [H.C.]	[27th June.

Read Second Time :—

Agricultural Holdings (Scotland) Bill [H.L.]	[28th June.
Civil Aviation Bill [H.L.]	[28th June.
Housing Bill [H.C.]	[27th June.
Legal Aid and Advice Bill [H.C.]	[27th June.
Marriage Bill [H.L.]	[28th June.

Read Third Time :—

Dover Harbour Bill [H.L.]	[28th June.
House of Commons (Redistribution of Seats) Bill [H.L.]	[30th June.
Nurses Bill [H.L.]	[27th June.

In Committee :—

Superannuation Bill [H.C.]	[30th June.

B. DEBATES

On the Second Reading of the **Housing Bill** LORD MACDONALD quoted the Report of the Royal Commission on Population to the effect that we should have to go on using some 3,000,000 older, defective houses for some considerable time to come. The report suggested that grants be made to equip these houses with hot water, bathrooms and indoor sanitation. It was to do these things—in houses which were still strong and sturdy—that the Housing Bill had made provision for improvement grants. The Bill would also provide financial encouragement for the building of hostels for young and old people. The Bill left it to each local authority to decide whether it would continue to build new houses or permit the transference of some labour and materials to the reconditioning of old premises. LORD LLEWELLIN regretted that the occupier of a tied cottage was not to have the benefit of these grants unless the landlord conferred a tenancy on him. If such tenancies were granted it would mean that farm workers could hold their employers to ransom, since they could not be replaced unless possession was obtained of their cottages. He welcomed the abolition of references to " the working class " which were out of date and often caused difficulties. He hoped that one form would be devised on which builders could apply for planning permission and building permission and the necessary licences. [27th June.

C. QUESTIONS

The LORD CHANCELLOR stated that in the case of *Sebel Products, Ltd.* v. *Commissioners of Customs and Excise* a dispute had arisen between the parties as to whether certain products of the plaintiff company were liable to purchase tax. Pending the decision of the court the company had paid the sum due to the Commissioners. Meanwhile they also collected the tax from their customers. On the court deciding that purchase tax was not payable the Commissioners decided to retain the money which had been paid to them on the ground that it had been money paid under a mistake of law. The real reason, he had been told, was that they thought the company would be unable to trace some of the people who had paid the purchase tax and would thus keep the money as a windfall. After further proceedings the judge had ordered the Commissioners to repay the money as having been paid and accepted under an implied agreement that it would be refunded if the decision of the court were favourable to the company. The judge also held that the money was *not* paid under a mistake of law because it was in fact paid pending a decision of the court as to what the law was. The judge had said *obiter* that since the Crown was placed by the Crown Proceedings Act, 1947, in the same position as a private subject, he saw no reason why the Crown should not rely on the defence of money paid under mistake of law, but he felt that Government departments should use it with great discretion, for the Crown was the fountain of all justice, and secondly because they should set the highest possible example to the taxpayers who might otherwise regard it as a legitimate excuse for withholding tax due to the Revenue authorities wherever possible. The actual decision therefore provided no reason for the abolition of the long-established rule, and there seemed to be no evidence that it worked hardship or was undesirable. He could only consider abolishing it if a Royal Commission or a committee recommended that, and he could at present see no reason for setting up such a body. A circular had been sent to the departments by the Treasury emphasising the need for discretion and steps had been taken to ensure a consistent policy in the matter. [30th June.

HOUSE OF COMMONS

A. PROGRESS OF BILLS

Read First Time :—

Telegraph Bill [H.C.]	[30th June.

To repeal s. 5 of the Post Office and Telegraph Act, 1940, in so far as it applies to contracts made by local telegraph authorities.

Read Second Time :—

Airways Corporations Bill [H.C.]	[29th June.
Patents and Designs Bill [H.L.]	[29th June.
Staffordshire Potteries Water Board Bill [H.L.]	[27th June.

Read Third Time :—

Edinburgh and Midlothian Water Order Confirmation Bill [H.C.]	[1st July.
Pier and Harbour Provisional Order (Crarae) Bill [H.C.]	[30th June.

Pier and Harbour Provisional Order (Southwold) Bill [H.C.] [30th June.

Salford Corporation Bill [H.C.] [30th June.

Teesside Railless Traction Board (Additional Routes) Provisional Order Bill [H.C.] [30th June.

B. DEBATES

During the Third Day's debate on the Committee Stage of the **Finance Bill**, in dealing with cl. 23 (Abolition of duties), Mr. ASSHETON said he wanted to warn everyone who had made a will to have a look at the clause because the Chancellor's new proposals in this clause were likely to have an important effect on the will. Many people did not understand what a considerable revolution in the Death Duty system was being made by these proposals. First, they ended the present differentiation in favour of near relatives of the testator; secondly, they greatly increased the amount payable, especially in the middle range of estates; thirdly, they increased the duty on agricultural land more steeply in relation to its present level than they increased the duty on any other classes of property. The Chancellor was proposing to abolish Legacy and Succession Duty and to concentrate all Death Duties on Estate Duty in the interests of simplification. Under the new proposals the widow and children, the nephews and nieces and the stranger were all to pay the same rate of duty, and the Opposition thought that very undesirable. Colonel DOWER said the new proposals were injurious to widows and children and removed the privilege hitherto enjoyed by members of the family in the question of Estate Duty. In reply, the SOLICITOR-GENERAL said the present position produced a great deal of complication from the point of view of beneficiaries, accountants, solicitors and everybody else. The main reason for the abolition of Legacy and Succession Duties was to simplify the law. He thought the new proposals would relieve the recipients of smaller legacies who were at present heavily taxed as compared with the member of the family who was residuary legatee. Moreover, at present the Legacy and Succession Duties fell much more heavily on the smaller estates. Under the new scheme wives and children who at present paid no Legacy or Succession Duty on estates up to £15,000 would remain in the same position or, if anything, be a little better off. It was not true to say that the proposals bore hardly on the person of moderate estate. [27th June.

On the Fourth Day of the Committee Stage of the Finance Bill, Mr. SELWYN LLOYD moved a new clause designed to enable costs incurred in obtaining a decision of the General or Special Commissioners for Income Tax or of any appeal therefrom touching the computation of profits or gains to be charged to income tax, etc., to be regarded as money expended for the purposes of the trade, profession, employment or vocation concerned unless the tribunal giving the decision certified that the appeal was vexatious. Mr. Lloyd said the mass of legislation of recent years had ensured a full and stable future for two professions at least—that of the law and that of accountancy. It was impossible for anyone to understand Sched. VI of the Bill without professional assistance, and if a business man had to embark on litigation in connection therewith he should be allowed to count the cost as deductible expenses. He might have to go all the way to the House of Lords and find, even if he were successful, that he was nevertheless involved in substantial expense. In reply, the SOLICITOR-GENERAL said he thought this question was pre-eminently one for the committee which would investigate the basis on which profits should be computed. The House of Lords had just pronounced against allowing costs to be so computed by a majority of three to two. If the law was altered in this particular case they would be drawn into altering it in respect of the costs of many other legal proceedings. Mr. J. FOSTER thought the present position an obvious injustice. The Treasury were only too ready when the taxpayer had scored a success to come along and reverse a decision by putting in a new clause or an amendment. Mr. C. WILLIAMS said that the average layman believed that when he took a complicated matter to a very high court which involved enormous expense in connection with his business it ought to be regarded as a business expense. They had passed a Bill to give legal aid to a vast number of people, and ought to do a measure of justice to business people. Mr. SELWYN LLOYD said no doubt the committee would consider his proposal and withdrew the new clause. [28th June.

When the Report Stage of the **Adoption of Children Bill** was taken Mr. PARKER moved a new clause to place an adopted child in the same position as natural children as regards rights of inheritance under the will of a deceased adopter, whether the will were made before or after the making of the adoption order. In seconding the clause Mr. LEVY said it would remove the present anomaly that the adopted child had to be specially mentioned if he was to take under the will of the adopter. In reply, Mr. NIELD said he thought the clause would not work. In dealing with this question three principles should be observed: first, if an adopted child was to be deemed natural for purposes of inheritance it would have to be severed from its rights and obligations to its real parents; secondly, a two-way system would have to be devised, the disposal of the adopted child's estate would also have to be considered; thirdly, he thought it would be quite wrong to interfere with wills and settlements already made. Neither did the clause cover the case where an adopting parent had left his property to his widow and such of his children as survived that widow, and it also ignored the problem of the natural relative of an adopted person. For the Government, Mr. YOUNGER said they were quite favourable to the idea, and they would be willing to co-operate in the House of Lords in devising a formula to meet the objections which had been raised. Next, Mr. SOMERVILLE HASTINGS moved a new clause to provide for prompt removal of a child from the custody of parents who had been refused an adoption order in respect of the child. Mr. NIELD said that this matter was already provided for in the Bill. Under cl. 5 (3), not only after refusal of an adoption order, but at any time after the welfare authority had been informed of the intention of applying for an adoption order, it could apply to a court of summary jurisdiction for an order for removal of the child to a place of safety. Furthermore, consideration would be given to an amendment of the 1939 Act so that a juvenile court refusing an order might have power then and there to hear an application under that section. The clause was withdrawn. A further amendment intended to require the consent of a local authority to an adoption of a child in respect of which the authority was *in loco parentis* was withdrawn on Mr. NIELD's pointing out that such consent was already required on his interpretation of the Children and Young Persons Act, 1933, and the Children Act, 1948. An amendment of Mr. NIELD's dispensing with the consent of a parent or guardian who had persistently ill-treated or neglected a child, was agreed to.

An amendment moved by Mr. MARSHALL to dispense with a parent's consent to an adoption order if he had failed to fulfil his duty under s. 10 (1) of the Children Act, 1948, to notify the local authority of his change of address, was withdrawn on Mr. NIELD's pointing out that such a failure would probably bring the child into the position in which it could be said that its parent had abandoned it or could not be found, in which case the court would already be empowered to dispense with his consent. Furthermore, it would be very wrong to dispense with consent if failure to notify was due to mere inadvertence. A new clause moved by Mr. LEVY and designed to establish a probationary period during which the child should be separated from its mother and in the care of an adoption society or of a children's committee of a local authority was discussed at length, but on a Division failed to find tellers for the Ayes. An amendment of Mr. NIELD's, which was agreed to, abolishes the provision in the 1939 Act whereby three months must elapse before an application can be made for an adoption order where the arrangements are made through a registered adoption society. On the other hand, the amendment extends from three to six months the period within which the adopter must either apply for an adoption order or give notice of his intention not to apply for one. A further amendment provides that where a child is adopted by its mother any affiliation order which she holds against the father shall continue to be effective unless and until she marries. [24th June.

Several new clauses of importance were added to the **Married Women (Maintenance) Bill** on its Report Stage. Provision was made for the extension of maintenance orders in respect of children after they reach the age of sixteen if they are engaged in a course of education or training, but not beyond the age of twenty-one. Provision was also made for an appeal to quarter sessions against the refusal of a court of summary jurisdiction to make, revoke, revive or vary any order under the Summary Jurisdiction (Married Women) Act, 1895, or under s. 5 of the Licensing Act, 1902. The statutory provisions which provide appeal to the High Court and for the statement of cases on points of law in relation to such matters are also repealed. Mr. ASTERLEY JONES, in moving this clause, said many men felt aggrieved at their treatment in these matters by courts of summary jurisdiction, but found the cost of appeal to the High Court, and the inconvenience, prevented them from appealing. The clause would bring matrimonial cases into line with criminal cases. A further new clause proposed by Mr. ASTERLEY JONES

and added to the Bill enacts that where payment is to be made to the collecting officer of the court that officer shall, unless he thinks it inexpedient or unnecessary in special circumstances, inform the married woman in any case in which the payments fall into arrears by four weeks or more, and that if she so requests him the collecting officer shall thereupon proceed in her name for the recovery of the arrears, but she to remain liable for costs to the same extent as if she had taken the proceedings herself. Mr. LESLIE HALE thought that it should be left to the collecting officer to decide whether he would take proceedings, but Mr. JONES pointed out that there was a small number of magistrates' courts which in the past had not taken their duties in this matter in a responsible way, and therefore it was intended to make the provision mandatory. Lieut.-Col. LIPTON pointed out that the first part of the new clause gave the collecting officer a discretion as to whether he informed the married woman of the arrears. He thought that this was investing the officer with judicial functions and was derogating from the powers of the magistrates. Mr. JONES replied that he would look at the points made and insert safeguards before the Bill was finally concluded. A last new clause moved by Mr. GLENVIL HALL increases from £2 to £5 the limits within which allowances are, under s. 25 of the Finance Act, 1944, taken out of the rules for deduction of tax at source and made subject to a direct assessment on the recipient.

The Bill was thereupon read a Third Time. Mr. ASTERLEY JONES expressed the hope that in the not too far distant future time would be found to consolidate the law relating to matrimonial affairs. Lieut.-Col. LIPTON gave a warning that the increase of the maximum for allowances to £5 would probably affect only a small number of women holding orders. He thought that some magistrates in the country had not hitherto carried out their duties in these matters in a way which left those who appeared before them without a sense of grievance and he hoped magistrates would exercise these additional powers with care. [24th June.

C. QUESTIONS

In reply to a number of questions, the SOLICITOR-GENERAL stated that the Government had decided to defer any decision on the Interim Report of the Leaseholds Committee until they had had an opportunity of considering any proposals which it might make in its Final Report. He could give no undertaking that any subsequent legislation would not be limited to leases signed after the report had been implemented by Act of Parliament. [27th June.

Mr. BEVAN announced that the Government had decided to repeal the Local Government (Boundary Commission) Act, 1945, which would involve the winding up of the Local Government Boundary Commission. It was felt that the 1945 Act limited the Commission's powers and limited their operations to the review and alteration of local government areas and they had no power to alter the structure of local government or to vary the functions of different classes of local authorities. This had made it difficult for the Commission to continue its work, and it had been decided to restore the position to what it was before 1945 until the Government had had an opportunity of reviewing the structure and functions of local government. This would mean that local authorities would have to revert to Private Bill procedure if they required immediate easement and where necessary the Government would give facilities. He did not think a Royal Commission would be appropriate as it would reproduce the disagreements which existed in local government circles, and he thought it very doubtful whether the Government would be able to reach an early decision on the reorganisation of local government. [27th June.

Mr. THORNTON-KEMSLEY asked the Minister of Town and Country Planning on what grounds the Central Land Board had ruled that houses erected for, or occupied by, a farmer, a farm bailiff or manager, or the resident manager of an agricultural estate, did not qualify for the special arrangements made in respect of houses reserved for members of the agricultural population under the Town and Country Planning Act, 1947. Mr. SILKIN replied that the concession was made to foster agriculture by encouraging the building of cottages for farm workers, and he saw no reason for extending it to the classes of persons mentioned in the question. [28th June.

The ATTORNEY-GENERAL stated that under the Law Reform (Personal Injuries) Act, 1948, if an injured person brought an action for damages, the court was required to deduct one-half of the amount of any industrial injury benefit, industrial disablement benefit or sickness benefit received by the injured person over a period of five years from the date of the injury from any damages for loss of earnings awarded to him. This rule was presumably taken into account when a claim for damages was settled by agreement with an insurance company, but it would be quite wrong for such a company to deduct from the payment the whole of the benefit received. He did not know that there was in fact any such practice and he did not think legislation necessary. [28th June.

Mr. J. FOSTER asked the Home Secretary if he would circularise clerks of courts of summary jurisdiction drawing attention to the provisions of the Criminal Justice Act, 1948, which prevent imprisonment of persons under twenty-one unless the court is satisfied that no other procedure is appropriate, and if he would ensure that legal aid was always given to young persons where imprisonment was contemplated in order that the full facts should be brought out. Mr. CHUTER EDE replied that he had already circularised clerks to justices on the first point; the question of legal aid was one for the court and he had no reason to think it would be withheld in the class of case referred to. [30th June.

Mr. CHUTER EDE stated that the numerous recommendations of the Gowers Report affected a number of Government departments. Arrangements had been made for their detailed consideration by the departments to assist the Ministers in deciding what further action to take. [30th June.

STATUTORY INSTRUMENTS

Alloa Water Order, 1949. (S.I. 1949 No. 1182.)

Barley (Great Britain) Order, 1949. (S.I. 1949 No. 1185.)

Beans and Peas (Sack Charges) (Amendment) Order, 1949. (S.I. 1949 No. 1166.)

Claims for Depreciation of Land Values (Mineral Undertakings) Regulations, 1949. (S.I. 1949 No. 1176.)

Claims for Depreciation of Land Values (Scotland) Amendment Regulations, 1949. (S.I. 1949 No. 1193.)

Cod Liver Oil (Revocation) Order, 1949. (S.I. 1949 No. 1190.)

Control of Binder Twine (Revocation) Order, 1949. (S.I. 1949 No. 1143.)

Control of Iron and Steel (No. 71) (Scrap) Order, 1949. (S.I. 1949 No. 1178.)

Control of Iron and Steel (No. 72) Order, 1949. (S.I. 1949 No. 1179.)

Control of Paper (Magazines) Economy Order, 1949. (S.I. 1949 No. 1149.)

Control of Paper (Newspapers) Economy Order, 1949. (S.I. 1949 No. 1148.)

Cutlery Wages Council (Great Britain) Wages Regulation Order, 1949. (S.I. 1949 No. 1146.)

Denbigh Water (No. 2) Order, 1949. (S.I. 1949 No. 1156.)

Draft **Dry Cleaning** Special Regulations, 1949.

Electricity (Falmouth, Dartmouth and Kingswear) (Transfer) Order, 1949. (S.I. 1949 No. 1181.)

Feeding Stuffs (Prices) (Amendment) Order, 1949. (S.I. 1949 No. 1160.)

Gas (Conversion Date) (No. 3) Order, 1949. (S.I. 1949 No. 1167.)

Labelling of Food (Amendment) Order, 1949. (S.I. 1949 No. 1161.)

Lanarkshire County Council (Daer) Water Order, 1949. (S.I. 1949 No. 1183.)

Levens Bridge–Broughton-in-Furness–Workington–Aspatria–Carlisle Trunk Road (Meathop Bridge Diversion) Order, 1949. (S.I. 1949 No. 1147.)

Manchester Pilotage (Amendment) Order, 1949. (S.I. 1949 No. 1141.)

National Health Service (General Medical and Pharmaceutical Services) (Scotland) (Amendment No. 2) Regulations, 1949. (S.I. 1949 No. 1168.)

National Insurance (Contributions) Amendment Regulations, 1949. (S.I. 1949 No. 1171.)

National Insurance (Pensions, Existing Beneficiaries and Other Persons) (Transitional) Amendment Regulations, 1949. (S.I. 1949 No. 1151.)

National Insurance (Pensions, Existing Contributors) (Transitional) Amendment Regulations, 1949. (S.I. 1949 No. 1150.)

Newsprint (Prices) (Amendment No. 3) Order, 1949. (S.I. 1949 No. 1175.)

Oats (Great Britain) (Amendment) Order, 1949. (S.I. 1949 No. 1162.)

Oats (Northern Ireland) (Amendment) Order, 1949. (S.I. 1949 No. 1163.)

Paper (Prices) Order, 1949. (S.I. 1949 No. 1159.)

Rags (Wiping Rags) (Maximum Charges) (Revocation) Order, 1949. (S.I. 1949 No. 1133.)

Retention of Pipe Under Highway (Worcestershire) (No. 1) Order, 1949. (S.I. 1949 No. 1196.)

Retention of Railway Over Highway (Leicestershire) (No. 2) Order, 1949. (S.I. 1949 No. 1197.)

River Trent Catchment Board (Newark Area Internal Drainage District) Order, 1949. (S.I. 1949 No. 1173.)

River Trent Catchment Board (Newark Area Internal Drainage District) (Appointed Day) Order, 1949. (S.I. 1949 No. 1174.)

This Order is printed with S.I. 1949 No. 1173, above, as one document.

Safeguarding of Industries (Exemption) (No. 5) Order, 1949. (S.I. 1949 No. 1158.)

Sales by Auction and Tender (Control) Order, 1949. (S.I. 1949 No. 1152.)

This Order replaces an Order of the same title made in 1947 and forbids, except by licence, sale by auction or tender of certain types of goods set out in the Schedules to the Order.

Stopping Up of Highways (Berkshire) (No. 1) Order, 1949. (S.I. 1949 No. 1180.)

Stopping Up of Highways (Norfolk) (No. 1) Order, 1949. (S.I. 1949 No. 1198.)

Stopping Up of Highways (North Riding of Yorkshire) (No. 2) Order, 1949. (S.I. 1949 No. 1142.)

Draft **Teachers Superannuation** (Royal Air Force Education) Scheme, 1949.

Draft Teachers Superannuation (Royal Navy Education) Scheme, 1949.

Telephone Amendment (No. 6) Regulations, 1949. (S.I. 1949 No. 1170.)

Utility Apparel (Maximum Prices and Charges) Order, 1949. (S.I. 1949 No. 1132.)

Wheat (Great Britain) Order, 1949. (S.I. 1949 No. 1164.)

Wheat (Northern Ireland) Order, 1949. (S.I. 1949 No. 1165.)

NOTES AND NEWS

Professional Announcements

Mr. RONALD M. SIMONS announces that he is now practising in his own name at Rego House, Dukes Place, London, E.C.3, having terminated his partnership in the firm of Goodwin, Simons & Goodwin.

Mr. JOHN WELDON BOWKER, practising at Whittlesey, near Peterborough, as Peed & Bowker, announces that as from 1st July, 1949, he has taken into partnership Mr. RICHARD HENRY HINTON. The practice is being carried on under the name of Peed, Bowker & Hinton, at the same address.

In addition to our previous announcement (see *ante*, p. 426), readers are asked to note that Dr. GEORGE MARTIN will continue to practise at 32 Victoria Street, Westminster, S.W.1, under the name of George Martin, Pollard & Stallabrass.

Honours and Appointments

The King has appointed Mr. REGINALD GLARK, K.C., a Commissioner of Assize on the North-Eastern Circuit.

The Lord Chancellor has appointed Mr. BRUCE HUMFREY Registrar of the Croydon, Dorking, Epsom, Horsham and Redhill County Courts; Mr. GILBERT HICKS Registrar of the Shoreditch and Kingston-upon-Thames County Court; and Mr. JOHN HAROLD SOADY, Registrar of Tonbridge, Tunbridge Wells and Sevenoaks County Courts, and District Registrar in the District Registry of the High Court of Justice in Tonbridge, to be in addition Registrar of the East Grinstead County Court. The appointments date from 1st July.

Mr. J. E. R. CARSON, deputy town clerk of West Hartlepool, has been appointed clerk to Cardiganshire County Council.

Mr. H. GRIMSHAW, chief assistant to the Clerk to the Justices at Doncaster, has taken up his duties as chief assistant to Preston Justices in succession to Mr. J. TATLOW, who is now magistrates' clerk at Macclesfield.

Mr. ALEC W. MOORE, junior assistant solicitor to West Hartlepool County Borough, has been appointed assistant solicitor to Hull Corporation.

Mr. F. H. SMITH, assistant solicitor (Prosecutions) in the Town Clerk's Department of Sheffield Corporation, has been appointed assistant solicitor to Hendon Borough.

Mr. E. W. J. NICHOLSON, town clerk of Chelsea, has been appointed town clerk, solicitor, chief financial officer and clerk of the peace for the Borough of Abingdon in succession to Mr. A. C. CROASDELL, now solicitor to the Midland Regional Gas Board at Birmingham.

Personal Notes

Mr. W. J. Godden, chief clerk to the firm of Sarjeant, Brown and Co., solicitors, of Reading, has completed fifty years' service with the firm. He has been presented with a television set as a token of appreciation of his long and loyal service.

Mr. R. W. S. Pollard, J.P., solicitor, recently addressed the Birmingham Marriage Law Reform Committee on "Marriage Law Reform."

Mr. R. G. Rivis, solicitor, of Ealing, has been appointed honorary curator of the museum in Gunnersbury Park.

Mr. W. E. Stone, chief clerk in the Court of Criminal Appeal office, has retired after forty-two years' service—since the office was opened in 1907.

Miscellaneous

The Central Land Board have made two compulsory purchase orders in respect of land at Hillside Road, Leighton Buzzard, and Whitlow Lane, Sheffield. The Board have now made five compulsory purchase orders.

The Committee on Taxation of Trading Profits (see *ante*, p. 412) is now prepared to receive written representations from any person or body of persons in connection with the matters it will have to consider. Communications should be sent to the Secretary, E. R. Brookes, New Wing, Somerset House, W.C.2.

A draft designation order for the creation of a new town at Cwmbran, Monmouthshire, has been issued. Copies of the order and maps can be inspected at the offices of the Cwmbran Urban District Council and at the Ministry of Town and Country Planning. Objections must be lodged by 25th July and these will be considered at a public local inquiry.

PROCEEDINGS UNDER THE SOLICITORS ACTS, 1932 TO 1941

The Disciplinary Committee constituted under the Solicitors Acts made the following orders on 17th June: that CHARLES ADRIAN BOULTON, of Bedford Row, be fined £50, forfeit to His Majesty, and that he should pay to the complainant his costs of and incidental to the application and inquiry; that LOUIS DAVID GORDON, formerly of High Shaw, Seven Wents, near Seal, Kent, be struck off the Roll; that WILLIAM EWART LIVERSEDGE, of Doncaster, be suspended from practice as a solicitor for one year from the date of the order and that he should pay to the applicant his costs of and incidental to the application and inquiry; that RICHARD ARTHUR PERRY, formerly of Birmingham, be suspended from practice as a solicitor for one year from the date of the order and that he should pay to the applicant his costs of and incidental to the application and inquiry; and that JAMES ROE, of Birkenhead, be suspended from practice as a solicitor for one year from the date of the order and that he should pay to the applicant his costs of and incidental to the application and inquiry.

Wills and Bequests

Mr. T. C. Jackson, solicitor, of Cottingham, left £170,148, net personalty £166,112.

Mr. J. R. C. Rotton, City solicitor, left £42,335.

Mr. E. W. Tunbridge, solicitor, of Leamington, left £18,110, net personalty £15,178.

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